

Exhibit 209

09.14.88 0411 PM *DILWORTH PHILA

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LAW OFFICES

DILWORTH, PAXSON, KALISH & KAUFFMAN

3800 THE FIDELITY BUILDING

PHILADELPHIA, PENNSYLVANIA 19108-1034

(215) 573-7000

CABLE ADDRESS: NYTEL TEL: 63-359

FAX: (215) 573-8540

SCANTON, PENNSYLVANIA

HARRISBURG, PENNSYLVANIA

DESA GARDEN, FLORIDA

WASHINGTON, D. C.

WEST ATLANTA CITY, NEW JERSEY

GARDEN, NEW JERSEY

DIRECT DIAL (215) 573- 7223

August 14, 1989

The Honorable Charles E. Weiner
United States District Court
Eastern District of Pennsylvania
U.S. Courthouse, Room 5011
501 Market Street
Philadelphia, PA 19105

Re: Fireworkers' Litigation
August 15, 1989, 2:00 p.m. meeting

Dear Judge Weiner:

We are local counsel in the Fireworkers' Litigation representing Engelhard Corporation/Eastern Wagonair Talc Company.

We will be attending the August 15, 1989 2:00 p.m. general meeting before Your Honor, and respectfully request that we have a brief conference with Your Honor and plaintiffs' counsel immediately after the general meeting to discuss our long-standing request to plaintiffs' counsel for dismissal. An attorney from the firm of Cabill Gordon & Reindel, national counsel for the client, will also be attending the meeting.

I spoke to one of your clerks, Chris, on August 10, and he suggested that we speak to you immediately after the general meeting regarding the foregoing.

By way of background, the following is a summary of our efforts to have our client voluntarily dismissed from this litigation. In short, we have provided plaintiffs' counsel with every item of information they have requested to demonstrate both

Bilworth, Paxson, Kalish & Kauffman
To: The Honorable Charles R. Weiner
August 14, 1989

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that there was no asbestos in our tale, and that our tale was not present at the M.F. Goodrich Plant in Oaks, Pennsylvania (We are only named in the Goodrich cases).

1. In August 1988 national counsel and I first spoke with plaintiffs' counsel, Jeffrey Schwartz, about the possibility of plaintiffs voluntarily dismissing our client from this litigation. Mr. Schwartz indicated that he would consider doing so if we provided him with the location of our tale mine and if his expert determined that it was not in a region in which asbestos-containing tale was found. By letter dated September 23, 1988, we provided plaintiffs' counsel with the Affidavit of Charles D. Carter, Engelhard Director of Joint Ventures and Resources, stating that our only tale mine was located in Johnson, Vermont, and that our client produced tale from that mine beginning in 1967, when it acquired the mine, through 1983, when the mine was closed.

2. Thereafter, national counsel and I had several discussions with Mr. Schwartz, and he advised us that his expert had detected, but that he would be receptive to dismissing our client if we produced a report from our own expert that our tale did not contain asbestos. By letter dated May 17, 1989 we provided plaintiffs' counsel with such a report. The Affidavit of William M. Ashton, who has been involved in investigating and studying tale for over 35 years, contains extensive reviews of both samples from the Johnson mine and the literature. Mr. Ashton concludes that our client's tale did not contain asbestos.

3. Thereafter, plaintiffs' counsel asked that we provide him with tale samples from our mine. We advised him that no samples were available, and that the Johnson, Vermont mine has been out of use since 1983 and is presently filled with water.

4. By letter dated June 14, 1989, plaintiffs' counsel asked for a copy of the report of Professor Poolay, a noted expert, dated December 14, 1982, which was referred to in the Affidavit of Mr. Ashton. Mr. Schwartz also requested an affidavit stating that the only mine ever owned or operated by our client was the Johnson mine, and that tale samples were unavailable. By letter dated June 11, 1989 we sent Mr. Schwartz a copy of Dr. Poolay's report, which also concludes that tale from the Johnson mine does not contain asbestos. In addition, we provided plaintiffs' counsel with a further affidavit of Charles D. Carter indicating that the Johnson mine was the only mine and that the client does not have any tale samples.

5. Thereafter, we spoke to Mr. Schwartz and received a letter from him dated July 19, 1989 again asking the location of our client's mine. We responded by letter dated July 28, 1989, stating once again that our one and only mine was in Johnson, Vermont.

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Dilworth, Foxson, English & Kauffman
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 August 14, 1989

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5. In our letter of July 28, 1989 we also pointed out to plaintiffs' counsel that there is no good faith basis for keeping our client in these cases because of the lack of product identification. From the time we were first sued, Mr. Schwartz has continually advised us that the sole and only basis for our client being named was the deposition testimony of John Bentley taken in September 1987 in an unrelated case in which we were not named, nor represented at the deposition. Since that time Mr. Bentley, the purchasing manager for the Oaks plant, was deposed in this litigation on July 28, 1989. At that deposition it became clear that Mr. Bentley cannot testify that our tale was present at the Oaks plant. Moreover, plaintiffs' counsel has failed to provide us with any records indicating that our client's product was present at the Oaks plant, and has indicated that there are no such records.

Disregarding the foregoing, plaintiffs' counsel have failed and refused to dismiss our client from this litigation to the great expense and detriment of our client, notwithstanding our efforts to meet every one of their demands.

Respectfully yours,

Victoria M. Kozarnicki
 Victoria M. Kozarnicki

VKK/kas

VIA HAND DELIVERY:

cc: Charles A. Klein, Esquire
 Jeffrey C. Schwartz, Esquire
 Jerry Lyons, Esquire

Exhibit 210



Luzenac America, Inc. • P.O. Box 680 • Windsor, VT 05089 • (802) 484-7763 • Fax: (802) 484-3621

October 17, 1994

Johnson & Johnson
One Johnson & Jonson Plaza
New Brunswick, NJ 08933-7002

Attn: Mr. John C. O'Shaughnessy

Dear Mr. O'Shaughnessy:

The following is in reply to your letter dated October 4, 1994, in reference to RITTER V. CYPRUS, ET AL.

To the best of my recollection and that of Bert White and Frank Hasty, the mines used to supply talc for the roofing industry prior to 1984 came from several ore bodies. We did not begin to produce roofing grade products from our local mines until 1970. These mines are Clifton, Frostbite, Argonaut, Rainbow, and the Hammondsville Mine. Prior to 1970, it is unclear where ore was shipped from. The following are the mines and dates in which talc was used for the roofing grades.

1970.....Clifton Mine
1971.....Clifton Mine
1972.....Clifton Mine, Frostbite Mine
1973.....Clifton Mine, Frostbite Mine,
 Argonaut Mine, Hammondsville Mine
1974.....Clifton Mine, Frostbite Mine,
 Argonaut Mine, Hammondsville Mine
1975.....Clifton Mine, Frostbite Mine,
 Argonaut Mine, Hammondsville Mine, Rainbow Mine
1976.....Clifton Mine, Frostbite Mine
 Argonaut Mine, Hammondsville Mine, Rainbow Mine
1977.....Clifton Mine, Frostbite Mine,
 Argonaut Mine, Hammondsville Mine, Rainbow Mine
1978.....Argonaut Mine, Rainbow Mine
 Hammondsville Mine
1979.....Clifton Mine, Argonaut Mine
 Rainbow Mine, Hammondsville Mine
1980.....Clifton Mine, Argonaut Mine
 Rainbow Mine, Hammondsville Mine
1981.....Clifton Mine, Argonaut Mine
 Rainbow Mine, Hammondsville Mine

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OCT 19 1994

J.C. O'SHAUGHNESSY

J&J-0109238

JNJ 000063581

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1982.....Clifton Mine, Argonaut Mine
Rainbow Mine, Hammondsville Mine
1983.....Clifton Mine, Argonaut Mine
Rainbow Mine, Hammondsville Mine
1984.....Clifton Mine, Frostbite Mine,
Argonaut Mine, Hammondsville Mine, Rainbow Mine

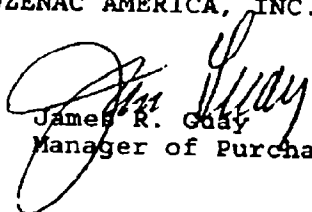
Testing was done on a monthly basis on the ore bodies we were mining. Composites for the talc used for industrial as well as cosmetics were sent to McCrone Associates, an independent lab for asbestiform analysis. Attached is a copy of the current procedure used which has been the procedure followed since 1970.

Samples are not available for this time frame since retention is only two years. All McCrone records for this time frame were turned over to Cyrus Minerals Company in 1989 with the sale of Windsor Minerals. It is my understanding that these records have since been turned over to Luzenac America Corporate Headquarters with the sale of Cyprus Windsor Minerals in 1992. Richard Zazenski, our Director Product Safety & Quality Assurance, may be able to help you in this area. He can be reached at (303)643-0404.

I hope the information I have provided will be of some assistance to you. If you have any other questions, please feel free to contact me.

Best regards,

LUZENAC AMERICA, INC.


James R. Guay
Manager of Purchasing

cc: F. Hasty
B. White
R. Zazenski

J&J-0109239

Exhibit 211



mcCrone environmental services, inc.

850 PASQUINELLI DRIVE
WESTMONT, ILLINOIS 60559 • 708-887-7100

3 January 1995

Re: Ritler v. Win?

Mr. John O'Shaughnessy
J & J, The Law Dept.
One J & J Plaza
New Brunswick, NJ 08933-7002

Subject: Windsor Minerals, Inc.
McCrone File No. ME-4055

Re: McCrone Project No. IL-2689

Dear Mr. O'Shaughnessy:

As you requested during our telephone conversation on 13 December 1994, I have completed my review of McCrone File No. ME-4055 for the additional information that you requested. The information that you requested included memos and/or correspondence from J & J that may assist in determining sample locations. A copy of the entire file has been enclosed for your review as you requested during our telephone conversation today.

If I can be of any further assistance, please do not hesitate to contact me at 708-887-7100.

Sincerely,

Laurie R. Bain
Vice President and General Manager

LRB:lrđ
Enclosures

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JAN 5 1995

J.C. O'SHAUGHNESSY

a member of the mcCrone group

J&J-0003946

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Exhibit 212

*Ritter -
Windsor*

Johnson & Johnson

Office Of
GENERAL COUNSEL

NEW BRUNSWICK, N.J.

April 4, 1995

Attorney Notes

SUBJECT: SITE VISIT TO VERMONT MINES AND INTERVIEW WITH
PROFESSOR BARRY DOOLAN - MARCH 23, 1995

MEMO TO FILE:

With respect to the Ritter case I met with Lance Meade, Geologist with Luzenac, Rick Suydam, Geologist with Luzenac, and Professor Barry Doolan of the University of Vermont. Specifically, we discussed the quality of the talc mined at the five mines which feed the roofing industry as well as the methods of mining at those mines during the time period in question (1970 through 1984). We met at the Columbia Mine and Mill and also visited the Clifton Mine (now closed) and the Argonaut Mine which is actively mined. Both of these sites were open pit mines; however, both had an underground component to them in the past. Luzenac will consolidate its operations as the Ludlow Mines and identify them by geographic location which is consistent with the way they handle their mining operations around the world. The Argonaut, Frostbite, Clifton and Rainbow Mines are all within one or two miles of each other. The Hammondsville Mine is approximately 20 miles away. These are their mines that supplied talc for the roofing industry at the relevant time for Ritter.

- I. I began my discussions with Luzenac Geologist Rick Suydam who has been working in the area since the mid 70s when he started with Windsor Minerals. He explained that there are two grades of talc that had come out of the Clifton mine, TC100, which is a lower grade high in carbonate and used in the joint compound industry. Roofing talc is grade 36 and is the majority of the talc taken out of that mine. N.B. In the early 1980s they discovered one vein running through the pit which was narrow and localized and contained fibrous form materials. Dr. William Gregg worked closely with Roger on this issue. Rick mentioned that caution was used to mine around this material and to waste it to the extent it was taken from the ground. He added that this was a difficult process.



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- II. I met our expert witness, Professor Barry Doolan at the stone house. He initially discussed the McCrone reports which indicate that there is no contamination in the mining process during the time period we're interested in which is roughly 1975 through '84. He pointed out that there are some letters which indicate findings of chrysotile asbestos in the material. Professor Doolan expressed surprise to see this type of material from these mines since chrysotile asbestos or any form of asbestos is not present in this geographic area. He explained that there is a well defined and unique belt containing asbestos which is in northern Vermont and runs up to New Foundland. He pointed out that this is the richest asbestos belt in the world and has been mined and known about for years. In sum, all asbestos deposits are north of the Vermont location. This is not to say that one cannot find lesser forms of asbestos in the south such as "slip fibers"; however, this would not be true asbestos.

Professor Doolan explained that the Windsor Mineral mines are in an area known as the Mooretown Deposit. They are, in a sense, the boundary between the Mooretown and Cramhill (country) rock formations. There is no question that one can find tremolite in these formations.

Professor Doolan explained that the ultramafic rock where one finds talc had been altered to serpentinite and then to talc in the metamorphic process over 450 million years ago. The talc in Vermont is a product of serpentine and the country or Cramhill rock. The serpentine deposits appear like beads on a string with the bead representing the serpentine. Serpentine in the middle is a remnant core which no one quarries. The talc zone, which is relatively thin, lays at the outer edges of the serpentine core. He pointed out that a lot happens on the edges. The serpentine body has contact with other rocks in this "reaction area". This is where one can find tremolite as well. The reaction areas contain chlorite, talc carbonate, quartz and also tremolite zones. One can't avoid it in the mining process. It has to be removed or extracted. It is in the vicinity.

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Rich Suydam pointed out that the company for the most part uses "continuous mining machines". It's easier to remove talc from other unwanted materials in this process since the operator is holding the drill in his hand and can point it directly at the talc deposit as he is mining. These talc deposits are easily distinguishable from other unwanted rock especially the serpentinite. Rick further indicated that the company's main selling point for the roofing grade talc was that it was platy which indicates that it was a purer form of talc.

Importantly, the company initially used the "drill and blast method of mining" at the Clifton Mine. This concerned Professor Doolan because it is a more indiscriminate mining method and is more likely to get material other than the desired talc. However, when we visited the open pit Clifton Mine later in the day, Professor Doolan noted that the reaction zone between the serpentinite and the talc deposit was very small to non-existent. In other words there was no layer or substantial layer which could contain tremolite. This site visit to the Clifton Mine corroborated Professor Doolan's reading of the 1975 map of the "Ludlow quadrangle" which showed the serpentinite deposit at the Clifton Mine to have a smaller, almost non-existent "reaction area".

Professor Doolan can testify that one does not find chrysotile in the geology of this area. He also states that the McCrone reports are consistent with not finding asbestos. He did point out that sometimes unusual minerals are found in lower Vermont and he questions whether the McCrone finding of chrysotile really refers to one of these unusual materials. However, the McCrone reports generally do not give the methodology of analysis so it's hard for him to tell. He called some of these unusual minerals asbestiform "slip fibers". He was concerned about it (up until the time to his actual visit to the Clifton Mine) but stated that these fibers have never been recorded in lower Vermont. His concern was regarding the type of reaction zone and whether it contained tremolite but after his visit to the Clifton Mine he felt much more comfortable since there was such a small reaction zone.

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Professor Doolan pointed out that the U. S. Geological survey has just completed a new mapping of the Ludlow triangle which is now ready for use and he will see if he can obtain a copy. He will get an enlarged mining map of this area for use in court. In fact, he found such a map in the office and took a copy of it with him.

With respect to Professor Doolan's expert opinion, he is comfortable in indicating that this geology did not contain asbestos. With respect to tremolite, he cannot say the talc did not contain it since it is present in the area and basically up to the mining method to avoid it or extract it from ore. We can have Roger Miller and McCrone fill in this area.

With respect to the extent of the tremolite zone, Lance Meade pointed out that it was very thin and that they measure it in inches and in feet at the most. If it is gone into by mistake, it is wasted. In fact Lance said that he would go to the mines and when he spotted tremolite containing materials, he would spray paint it orange so it would not be used.

III. Examining the August, 1975 map of the Ludlow Triangle

1. Clifton Mine - This mine is the only mine where the company drilled and blasted for ore. It was strictly surface mining but Rick pointed out that we quickly switched to mechanical mining at the site. The Clifton Mine was used during the whole time of the plaintiff's work at Tamko, from 1970 through 1984.
2. Frostbite Mine - This mine was utilized from 1972 or so through the end of 1977. It was all mined underground.
3. Argonaut Mine - This mine was utilized from 1973 through 1984. From '73 through 1980 it was underground and became surface in about 1978 while underground was running at the same time. This mine used mechanical miners until 1985.

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4. **Rainbow Mine** - This mine has been in operation since 1975, although very little is coming out now. There is good detail on the '75 map for this mine showing good control in terms of where the ore was extracted. It has been an all surface mine from 1975 through the present.
5. **Hammondsville Mine** - This mine has been closed since 1971. It is the mine that provided the talc to the cosmetic/toiletry industry. It started as a very small open mine and quickly went underground. It is under water now and the reason for this is that the water table has risen. Today, the cosmetic talc is extracted from the Hamm Mine which will soon be switched to Argonaut.

Rick pointed out that all the cosmetic grade talc goes to Johnson & Johnson which maintains strict quality control. Also, the floatation method is used. This is a very sensitive method since the talc and the contaminants weigh about the same and only the talc remains floating after treatment. The Hammondsville Mine became a significant source of talc during the later years with respect to plaintiff's tenure at Tamko because charts show the company was getting two times as much ore out of this mine compared to the others.

The Gassets Mill was used for grade 36. The talc was processed by a dry grinding method. Whatever was taken out was put into the mill and grind down. With respect to all the mines, Rick pointed out that the company did test drillings so it was known where the mines were going within the ore body. Rick pointed out that the floatation method was not used for roofing talc.

Barry pointed out that although the McCrone records show a small amount of contaminated rock, the report suggests good mining operation since the amounts are so small. Doolan cannot say that the rock cannot host chrysotile because the same host rock does have chrysotile in the northern or rich asbestos area. But the chrysotile, if it is present here, must

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be an extremely low percentage. He pointed out that there is added incentive to avoid tremolite areas because it is more expensive to mine. Professor Doolan noted that there is no mention at all of tremolite in the McCrone reports. (Attorney's note: It may depend on how McCrone defines asbestoform fibers).

IV. Doolan's Opinion

As indicated above, Doolan will state that there is no "asbestos" in the Ludlow quadrangle or the mines that provided talc to the roofing industry. We must be careful, however, since asbestos is a much maligned term and involves many different fibers. Professor Doolan is speaking only of the strict geology meaning of asbestos and not the legal definition. With respect to tremolite, he indicates that it is present in this area and naturally occurring and the presence of it in talc depends chiefly on the mining methods and whether or not there is a careful avoidance of mining into such rock. As indicated above, there are economic incentives not to mine this rock. In addition, the areas to be avoided are somewhat obvious to the miners who are using the actual equipment on the rock so avoidance isn't a confusing or ambiguous endeavor. Roger Miller's testimony on this issue will be important.

Basically, I can see using Professor Doolan for the following:

1. To explain what geology is and the terms involved.
2. To explain the geology of the Vermont region in general and for the Ludlow quadrangle in particular.
3. To explain the geology of these particular mines to the extent he can do so.

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4. To give an opinion that based on all of his knowledge and material he has seen that these mines did not produce talc containing asbestos.
5. That with respect to tremolite, there is no indication that the talc is contaminated with any tremolite; however, he can't state for certain since that can only be done by mining engineers who were responsible and present for the day-to-day mining procedures to explain how tremolite was avoided and wasted.

The basis for Dr. Doolan's knowledge is:

1. His review of the geology literature over time.
2. Examination of the mining maps for this area.
3. Discussions with company geologists regarding mining methods and geology of the area.
4. His personal visits to the Ludlow quadrangle including specifically the Argonaut and Clifton Mines.
5. Professor Doolan pointed out that although he didn't investigate much of this area personally, under his direction his students have extensively mapped this area, including the serpentinite bodies.
6. Professor Doolan's specific areas of research focus on the origin of all of these rocks from Quebec to the Massachusetts border. He considers himself an "Appalachian Geologist" and is intimately familiar with the evolution of the geology of this area. His research included bedrock mapping of the area, lab studies of rock (which

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measure changes after chemical analysis and microscopic viewing) and understanding the structure of the formations which includes the fabric and shearing. Basically, his understanding how the rocks evolved over time.

He has done this for the last 25 years in Vermont and has an obvious enthusiasm for these rocks. He will be able to state quite clearly that talc is contained in these deposits not just as part of a random mix of minerals but rather as a distinct deposit which can be selectively mined to extract talc.

Demonstrative exhibits: Dr. Doolan will prepare a map of the Ludlow quadrangle using the August, 1975 map as a basis, and we will have actual samples of talc and serpentinite from this area.

John C. O'Shaughnessy

JCO:jcm

Exhibit 213

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<p style="text-align: right;">Page 420</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 LEVIN, PAPATONIO, RAFFERTY, PROCTOR, BUCHANAN, O'BRIEN, BARR & MOUGEY, P.A. BY: CHRISTOPHER V. TISI, ESQ. 316 South Baylen Street, Suite 600 Pensacola, Florida 32502-5996 850-435-7176 ctisi@levinlaw.com For the Plaintiff, Vickie Forrest</p> <p>7 COHEN, PLACITELLA & ROTH BY: CHRISTOPHER M. PLACITELLA, ESQ. 127 Maple Avenue Red Bank, New Jersey 07701 732-749-9003 cplacitella@cprlaw.com For the MDL Plaintiffs</p> <p>12 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP BY: ALLISON M. BROWN, ESQ. and RICHARD T. BERNARDO, ESQ. One Manhattan West New York, New York 10001-8602 212-735-3000 allison.brown@skadden.com richard.bernardo@skadden.com For the Defendant, Johnson & Johnson</p> <p>18 YETTER COLEMAN LLP BY: COLLIN J. COX, ESQ. 811 Main Street, Suite 4100 Houston, Texas 77002 713-632-8000 ccox@yettercoleman.com For the Witness</p> <p>22</p> <p>23 ALSO PRESENT:</p> <p>24 JOEL SCHNEIDER, USMJ (Retired)</p>	<p style="text-align: right;">Page 422</p> <p>1 REMOTE APPEARANCES, continued:</p> <p>2</p> <p>3 BARNES LAW GROUP, LLP BY: JOHN R. BEVIS, ESQ. 31 Atlanta Street Marietta, Georgia 30060 678-290-2240 bevis@barneslawgroup.com For the Plaintiffs</p> <p>6 ROBINSON CALCAGNIE, INC. BY: GENEVIEVE OUTLAW, ESQ. 19 Corporate Plaza Drive Newport Beach, California 92660 949-720-1288 goutlaw@robinsonfirm.com For the Plaintiffs in JCCP 4872</p> <p>11</p> <p>12 BLASINGAME, BURCH, GARRARD & ASHLEY, PC BY: LEANNA BANKESTER PITTARD, ESQ. and SARA SCHRAMM, ESQ. 2100 Southbridge Parkway Suite 650 Birmingham, Alabama 35209 866-354-3544 lpittard@bbga.com sschramm@bbga.com For the MDL Plaintiffs</p> <p>16</p> <p>17 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP BY: CATHERINE I. MULLALEY, ESQ. 500 Boylston Street Boston, Massachusetts 02116 617-573-4851 kate.mullaley@skadden.com For the Defendant, Johnson & Johnson</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
<p style="text-align: right;">Page 421</p> <p>1 ALSO PRESENT, continued:</p> <p>2</p> <p>3 WILLIAM GEIGERT, VIDEOGRAPHER</p> <p>4 MICHAEL KUTYS, EXHIBIT TECH</p> <p>5 REMOTE APPEARANCES:</p> <p>6</p> <p>7 BEASLEY, ALLEN, CROW, METHVIN, PORTIS & MILES, P.C. BY: LEIGH O'DELL, ESQ. 218 Commerce Street Montgomery, Alabama 36104 800-898-2034 leigh.odell@beasleyallen.com For the Plaintiff, Vickie Forrest</p> <p>11</p> <p>12 ASHCRAFT & GEREL, LLP BY: MICHELLE A. PARFITT, ESQ. 1825 K Street, N.W., Suite 700 Washington, D.C. 20006 202-759-7648 mparfitt@ashcraftlaw.com For the Plaintiff, Vickie Forrest</p> <p>16</p> <p>17 COHEN, PLACITELLA & ROTH BY: DENNIS M. GEIER, ESQ. and HARRY M. ROTH, ESQ. 127 Maple Avenue Red Bank, New Jersey 07701 732-749-9003 dgeier@cprlaw.com hroth@cprlaw.com For the MDL Plaintiffs</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 423</p> <p>1 REMOTE APPEARANCES, continued:</p> <p>2</p> <p>3 FAEGRE DRINKER BIDDLE & REATH LLP BY: SUSAN M. SHARKO, ESQ. 600 Campus Drive Florham Park, New Jersey 07932 susan.sharko@faegredrinker.com 973-549-7000 For the Defendant, Johnson & Johnson</p> <p>6</p> <p>7</p> <p>8 SEYFARTH SHAW LLP BY: THOMAS T. LOCKE, ESQ. 975 F Street, N.W. Washington, D.C. 20004 202-828-5376 tlocke@seyfarth.com Appearing on behalf of Personal Care Products Council</p> <p>11</p> <p>12</p> <p>13 TUCKER ELLIS, LLP BY: ELIZABETH J. CUMMINGS, ESQ. 100 South 4th Street St. Louis, Missouri 63102 314-571-4969 elizabeth.cummings@tuckerellis.com For the Defendants, PTI Royston, LLC and PTI Union, LLC</p> <p>16</p> <p>17</p> <p>18 ALSO PRESENT:</p> <p>19 LEA CALLAHAN, Paralegal</p> <p>20 JEN SECRIST, Paralegal</p> <p>21 STEPHANIE E. MARTIN</p> <p>22</p> <p>23</p> <p>24</p>

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4	BY MR. PLACITELLA:	430, 879, 903
5	BY MR. TISI:	776, 849
6	BY MS. BROWN:	779, 903
7	E X H I B I T S	
8	NUMBER DESCRIPTION	MARKED
9	O'Shaughnessy	
10	Exhibit JOS 1 McCrone Binder 1	482
11	Exhibit JOS 1A McCrone Binder 2	482
12	Exhibit JOS 2A Musco-2/Hopkins Binder 1 of 2	430
13	Exhibit JOS 2B Musco-2/Hopkins Binder 2 of 2	430
14	Exhibit JOS 3 Additional Testing Binder	430
15	Exhibit 4 Handwritten Document	644
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17	Exhibit TR-15 Deposition of Dr. John Hopkins dated 3/6/07	678
18	Exhibit 82 Muscat Video Clip	864
19	Exhibit 172 Deposition of Glenn A. Hemstock dated 1/28/83	536
20	Exhibit 173 Deposition of Glenn A. Hemstock dated 3/16/83	538
21	Exhibit 188 Stipulation of Dismissal, Letter dated 7/23/87, Affidavit of Roger Miller, and Letter dated 1/28/87	463

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2	Exhibit 198 Letter dated 11/26/90 and Attachment Bates JNJMX__68__000012851 to 12859	738
3	Exhibit 230 Affidavit of Dr. John Hopkins in Durham case	680
4	Exhibit 270 Deposition of Roger N. Miller taken 6/12/91	896
5	Exhibit 274 Letter dated 1/23/88 Bates JNJ 000024573 to 24576	633
6	Exhibit 277 Answers to Interrogatories in Krushinski Case Bates JNJ 000065001 to 650011	663
7	Exhibit 282 Roger Miller Affidavit in Andonian case Bates JNJ-WIL__0000094 to 95	499
8	Exhibit 319 Letter dated 10/27/97 and Attachments	652
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12	Exhibit 418 Email String dated 11/21/08	755
13	Exhibit 436 Deposition of Peter N. Gale dated 4/26/83	547
14	Exhibit 441 Stipulation and Confidentiality Order	554
15	Exhibit 443 Windsor Minerals' Responses to Interrogatories in Westfall case	720

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1	Exhibit 446 Agreement Between Cyprus & J&J dated 1/6/89	511
2	Exhibit 456 Report dated 11/23/83 Bates JNJ 000240739 to 40742	744
3	Exhibit 472 Photograph	900
4	Exhibit 486 Privilege Log	715
5	Exhibit 488 Spreadsheet	891
6	Exhibit 491 Memo dated 1/4/84	748
7	Exhibit 525 Event Report dated 1/9/17 Bates JNJALC000125625 to 125632	451
8	Exhibit 1035 Letter dated 1/3/95	573
9	Exhibit 1039 Excerpt for J&J Privilege Log	526
10	Exhibit 1040 Letter dated 8/14/89	563
11	Exhibit 1042 Dismissal Order	515
12	Exhibit 1043 Deposition Of Roger N. Miller dated 4/6/95	618
13	Exhibit 1044 Deposition of Roger Miller taken 1/16/07	697
14	Exhibit 1047 Affidavit of Roger Miller in Miller case	507
15	Exhibit 1048 Letter dated 9/10/85 Bates JNJ 000064652	484
16	Exhibit 1049 Legal Hold Letter dated 5/16/03	718
17	Exhibit 1051 Document Preservation Notice Bates JNJALC000949679 to 949681	722

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1	Exhibit 1052 Mediation Memo dated 2/4/03 Bates JNJALC001243929 to 1243949	666
2	Exhibit 1053 Letter dated 6/6/88	475
3	Exhibit 1054 Letter dated 8/27/86	468
4	Exhibit 1060 Transcript of John Hopkins	477
5	Exhibit 1061 Andonian Case Witness List Bates JNJ 000065334 to 65339	497
6	Exhibit D-1 Affidavit of Robert K. Denton	810
7	Exhibit D-2 Letter dated 9/28/72 and Report Bates JNJALC000289268 to 359834	820
8	Exhibit D-3 Letter dated 3/18/02 Bates JNJALC00109268 to 109278	828
9	Exhibit D-4 Case Control Studies that were Published from 1992 to 1999	845

<p style="text-align: right;">Page 440</p> <p>1 Q. Okay. And who was in charge of 2 gathering evidence to supply answers to 3 discovery in talc litigation? 4 MS. BROWN: I object, 5 Your Honor, for the same reasons, 6 work product. 7 JUDGE SCHNEIDER: Can I 8 ask the court reporter to repeat 9 the question? 10 - - - - 11 (Whereupon, the reporter read 12 back as requested.) 13 - - - - 14 JUDGE SCHNEIDER: Okay. 15 Is the question who was in charge, 16 is that what it said? I think the 17 question who was in charge is 18 objectionable as work product, but 19 I don't think the question of who 20 supplied information to answer 21 interrogatories is work product. 22 That's clearly discoverable and is 23 an appropriate interrogatory that's 24 typically asked. So if the</p>	<p style="text-align: right;">Page 442</p> <p>1 talc litigation, they might have played a 2 role in that, I just don't recollect, but 3 as time went on and the litigation grew, 4 then, you know, then the legal team grew 5 and there was more responsibility 6 concerning ongoing discovery through the 7 legal team and collecting and interviewing, 8 you know, again, people at the company to 9 obtain the information. 10 Q. When evidence was turned over 11 in talc litigation, where was it stored, 12 within what Johnson & Johnson? 13 MS. BROWN: I object. 14 Work product, Your Honor. 15 JUDGE SCHNEIDER: 16 Objection overruled. That's not 17 work product. 18 THE WITNESS: Typically, 19 the documents would be collected 20 and maintained by outside counsel. 21 BY MR. PLACITELLA: 22 Q. So they would be kept with 23 outside counsel and would you at Johnson & 24 Johnson keep copies?</p>
<p style="text-align: right;">Page 441</p> <p>1 question is who supplied 2 information rather than the person 3 who was in charge, that can be 4 asked, but the question who was in 5 charge is work product. 6 BY MR. PLACITELLA: 7 Q. Okay. Can you answer Judge 8 Schneider's question? He's been around, 9 you know, on the bench, so he's a little 10 better at that than me. 11 A. When we answered discovery in 12 general, what would happen is outside 13 counsel in coordination with me would 14 interview appropriate people at the company 15 who had knowledge of the product or the 16 issues in the lawsuit. They would be 17 tasked also with collecting relevant 18 documents and assembling them for use in 19 the litigation. 20 Q. And that by name is who? 21 A. Early on, it would have been 22 Mr. Williams and the MehaffyWeber firm. It 23 also would have been to the extent if there 24 were any other firms that were handling</p>	<p style="text-align: right;">Page 443</p> <p>1 A. No, there was too many of them. 2 Q. Okay. And when there was 3 information from prior litigation, like, a 4 case was closed, a talc case, for example, 5 was closed, what was done with those files? 6 A. The Johnson & Johnson files 7 or -- 8 Q. Yes. 9 A. -- the outside counsel files? 10 Q. Both. 11 A. Johnson & Johnson had a file 12 system where the summons and complaint were 13 filed to it, so there would be a file for a 14 case name and a general file where papers 15 would be filed to that. And then they 16 would be maintained there, whatever papers 17 were filed, including the closing 18 documents. 19 Q. So, for example, if a witness 20 in a Johnson & Johnson talc case provided a 21 sworn statement that you reviewed, where 22 would that be -- where would that be saved 23 at Johnson & Johnson when the case was 24 over?</p>

Page 444

1 A. It might not have been kept at
2 Johnson & Johnson. It might have been kept
3 by outside counsel and it might not have
4 been kept at Johnson & Johnson. Johnson &
5 Johnson did not keep, generally speaking,
6 as far as I am aware, like, a mirror file
7 of what outside counsel has.
8 Q. Well, if someone made a request
9 in a case and they said give me all of the
10 prior statements on this issue that were
11 made by Johnson & Johnson employees, either
12 in terms of interrogatories or affidavits,
13 you would have to go to outside counsel and
14 get them?
15 A. I maybe would have it in a file
16 and know where it was or, yeah, we would go
17 to outside counsel for it, yes.
18 Q. And you kept track of what
19 outside counsel was in possession of, what
20 statements and what discovery responses?
21 MS. BROWN: I object
22 Your Honor, work product in terms
23 of what outside counsel had versus
24 Mr. O'Shaughnessy.

Page 445

1 JUDGE SCHNEIDER:
2 Objection overruled. I think this
3 is akin to document custodian
4 questions which are appropriate for
5 discovery to find out the location
6 and existence of discoverable
7 documents and whether they can
8 search for and produce in discovery
9 and I think that is an appropriate
10 area of discovery.
11 THE WITNESS: I'm sorry,
12 can --
13 MR. PLACITELLA: Can you
14 read the question back, please?
15 - - - - -
16 (Whereupon, the reporter read
17 back as requested.)
18 - - - - -
19 THE WITNESS: Not
20 really.
21 BY MR. PLACITELLA:
22 Q. So you were in charge for a
23 while at least before you retired of the
24 ovarian cancer talc litigation, right?

Page 446

1 A. Up until about 2012, I was
2 responsible for the day to day.
3 Q. But you were involved after
4 2012. I saw you at a deposition.
5 A. Yes, I had a limited role after
6 that.
7 Q. Okay. And when documents were
8 produced in the ovarian cancer talc
9 litigation, did you go to all of the
10 outside counsel and say give me all of the
11 prior sworn statements from Johnson &
12 Johnson?
13 MS. BROWN: Objection,
14 Your Honor, work product.
15 JUDGE SCHNEIDER: Same
16 ruling, overruled, because again,
17 this is akin to document custodian
18 questions, which is an appropriate
19 area of inquiry.
20 THE WITNESS: I don't
21 recall that I did that and I don't
22 recall whether I had any
23 responsibility for discovery, I
24 don't know what stage discovery was

Page 447

1 at in the ovarian cancer litigation
2 by the time I had left supervising.
3 BY MR. PLACITELLA:
4 Q. Well, who was in charge at that
5 point that made those calls?
6 A. It would have been, it would
7 have been for Johnson & Johnson, it would
8 have been Denise Houghton in conjunction,
9 again, with Gene Williams and his firm,
10 which by then might have been Shook Hardy.
11 Q. So as you sit here today, you
12 cannot testify under oath that in the
13 ovarian cancer litigation you have produced
14 all of the prior sworn statements given by
15 Johnson & Johnson employees in talc
16 litigation, correct?
17 MS. BROWN: I object as
18 vague. Are we talking about in
19 response to a particular discovery
20 request.
21 THE WITNESS: All I --
22 MR. PLACITELLA: You can
23 answer it.
24 THE WITNESS: What I can

Exhibit 214



mcCrone environmental services, inc.

850 PASQUINELLI DRIVE
WESTMONT, ILLINOIS 60559 • 708-887-7100

3 January 1995

Mr. John O'Shaughnessy
J & J, The Law Dept.
One J & J Plaza
New Brunswick, NJ 08933-7002

Re: Ritler v. Win?

Subject: Windsor Minerals, Inc.
McCrone File No. ME-4055

Re: McCrone Project No. IL-2689

Dear Mr. O'Shaughnessy:

As you requested during our telephone conversation on 13 December 1994, I have completed my review of McCrone File No. ME-4055 for the additional information that you requested. The information that you requested included memos and/or correspondence from J & J that may assist in determining sample locations. A copy of the entire file has been enclosed for your review as you requested during our telephone conversation today.

If I can be of any further assistance, please do not hesitate to contact me at 708-887-7100.

Sincerely,

Laurie R. Bain
Vice President and General Manager

LRB:lrđ
Enclosures

RECEIVED

JAN 5 1995

J.C. O'SHAUGHNESSY

a member of the mcCrone group

J&J-0003946

JNJ 000687065

Exhibit 215

1 CHARLES F. PREUSS (State Bar No. 45783)
2 THOMAS W. PULLIAM, JR. (State Bar No. 46322)
3 PREUSS, WALKER & SHANAGHER
4 595 Market Street, 16th Floor
5 San Francisco, California 94105-2802
6 Telephone: (415) 978-2600

7 Attorneys for Defendant
8 JOHNSON & JOHNSON CONSUMER PRODUCTS, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

MARLENE SELBY and LOWELL
WAYNE SELBY,

; Plaintiff,

.v.

JOHNSON & JOHNSON, a New Jersey
corporation; AVON PRODUCTS, INC., a
New York corporation; LONGS DRUG
STORES CALIFORNIA, INC., a
California corporation; and DOES 1
through 100, inclusive,

Defendants.

No. 670577

DEFENDANT JOHNSON &
JOHNSON CONSUMER
PRODUCTS, INC.'S
SUPPLEMENTAL RESPONSES TO
PLAINTIFFS' SPECIAL
INTERROGATORIES

PROPOUNDING PARTY: Plaintiffs, MARLENE SELBY, et al.

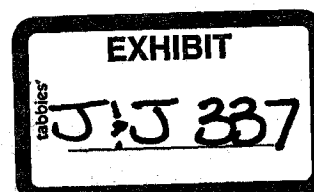
RESPONDING PARTY: Defendant, JOHNSON & JOHNSON CONSUMER
PRODUCTS, INC., erroneously sued as JOHNSON
& JOHNSON

SET NUMBER: ONE

DEFINITIONS

1. The word "YOU", "YOUR", or "YOURSELF" refers to the party to
which these interrogatories are addressed and any and all of its agents,
representatives and/or employees.

///



1 2. The term "THE PRODUCT" refers to the chemical composition, or
2 compositions, marketed as Johnson's Baby Powder.

3 3. The term "PRODUCT CONTAINER" refers to the complete vessel
4 holding THE PRODUCT, as marketed and/or distributed to the general public,
5 including all packaging, attachments or inserts.

6 4. The term "DOCUMENT" means a writing, as defined in Evidence
7 Code Section 250, and includes the original or a copy of handwriting, typewriting,
8 printing, photostating, photographing, computer data and records, and every other
9 means of recording upon any tangible thing and form of communicating or
10 representing, including letters, words, pictures, sounds, or symbols or
11 combinations of them, including any/all computer records.

12 5. The term "IDENTIFY" as used herein means to describe with
13 particularity the person, place, document and/or event referred to in the
14 interrogatory, including, where requested, the name, address, telephone number,
15 character of the document and/or event, and the relationship of the person, place
16 and/or event to the defendant so as to allow the documents to be requested with
17 particularity in Requests for Production and to allow persons to be properly
18 noticed for deposition.

19 6. The Term "JJCPI" refers to Johnson and Johnson Consumer Products,
20 Inc.

21 7. The Term "QUALITY CONTROL", as used herein shall mean any
22 tests, samplings, and/or studies conducted at any time during the manufacture,
23 production, marketing and/or distribution of THE PRODUCT, its ingredients and
24 or THE PRODUCT CONTAINER, whether conducted at random or in accordance
25 with a regularly maintained schedule.

26 ///

27 ///

28 ///

SPECIAL INTERROGATORIES

INTERROGATORY NO. 1:

State the trade name, product identification number and/or other means of identification of the product whose label reads "Johnson's Baby Powder". (See Exhibit "A" attached hereto).

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 1:

The name of THE PRODUCT appearing on the container label is and has been "Johnson's Baby Powder". The trade name is "Johnson's".

INTERROGATORY NO. 3:

IDENTIFY by name, title and last known address, the person(s) most knowledgeable of the design and formulation of the chemical formula and/or composition of THE PRODUCT, from the time the product was first marketed and/or distributed to the present.

INTERROGATORY NO. 4:

IDENTIFY by name, title and last known address, the person(s) most knowledgeable of manufacturing of THE PRODUCT, from the time the product was first marketed and/or distributed to the present.

INTERROGATORY NO. 5:

IDENTIFY by name, title and last known address, the person(s) most knowledgeable of manufacturing of THE PRODUCT CONTAINER, from the time the product was first marketed and/or distributed to the present.

INTERROGATORY NO. 24:

For each complaint and/or report identified in YOUR response to Interrogatory No. 23, IDENTIFY the person most knowledgeable concerning how YOU investigated, responded to and/or resolved each complaint and/or report.

SUPPLEMENTAL RESPONSE TO INTERROGATORIES NOS. 3, 4, 5 and 24:

With the exception of Dr. Bruce Semple, the persons identified are JJCPI employees and we will cooperate with you in making them available for

1 deposition, should that become necessary and appropriate. Dr. Bruce Semple is
2 the former Medical Director of JJCPI and is now with Procter & Gamble in
3 Cincinnati, Ohio. Dr. Semple should not be contacted except through the formal
4 deposition process, and, if you wish to depose him, JJCPI requests that its counsel
5 be contacted first, so that JJCPI may assist in scheduling a deposition mutually
6 convenient to all parties.

7 INTERROGATORY NO. 15:

8 IDENTIFY all warnings which appeared at any time on/with the PRODUCT
9 CONTAINER or which were included with THE PRODUCT and its packaging at
10 the time THE PRODUCT was first marketed in the United States.

11 INTERROGATORY NO. 16:

12 If at any time since you first began marketing THE PRODUCT the warnings
13 to consumers included on the PRODUCT CONTAINER were changed and/or
14 modified, describe each such modification and/or change, including the substance
15 of the modification and/or change, the date each modification and/or change was
16 instituted, the purpose of the modification and/or change and the identity of the
17 person upon whose authority each modification and/or change was implemented.

18 SUPPLEMENTAL RESPONSE TO INTERROGATORIES NOS. 15 and 16:

19 JJCPI believes its previous responses are adequate.

20 INTERROGATORY NO. 27:

21 State the name and full address of each location and/or plant where THE
22 PRODUCT is manufactured.

23 INTERROGATORY NO. 28:

24 State the name and full address of each location and/or plant where the
25 PRODUCT CONTAINER is manufactured.

26 ///

27 ///

28 ///

1 INTERROGATORY NO. 29:

2 State the name and full address of each location where JOHNSON'S BABY
3 POWDER is manufactured in final form before being distributed for sale to the
4 general public.

5 SUPPLEMENTAL RESPONSE TO INTERROGATORIES NOS. 27, 28 and 29:

6 Royston, Georgia is the only location of any manufacturing facility for THE
7 PRODUCT. JJCPI will cooperate in arranging an inspection of that plant, should
8 that become necessary and appropriate.

9 INTERROGATORY NO. 36:

10 Do YOU have knowledge of any tests and/or studies conducted concerning
11 the health effects of asbestos on humans?

12 SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 36:

13 There has been no asbestos in THE PRODUCT during the time plaintiff
14 claims to have used it. Accordingly, the information sought by this interrogatory
15 is neither relevant to the subject matter of this action as to JJCPI nor is it
16 reasonably calculated to lead to the discovery of admissible evidence against
17 JJCPI. If plaintiffs have evidence that THE PRODUCT has contained asbestos at
18 any relevant time, JJCPI will reconsider this response.

19

20 Dated: April 20, 1994

PREUSS, WALKER & SHANAGHER

21

22

Thomas W. Pulliam, Jr.
THOMAS W. PULLIAM, JR.

23

Attorneys for Defendant
JOHNSON & JOHNSON CONSUMER
PRODUCTS, INC.

24

25

26

27

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CERTIFICATE OF SERVICE BY MAIL

I, BEVERLY A. LEE, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years and not a party to or interested in the within entitled action. I am an employee of PREUSS, WALKER & SHANAGHER, and my business address is 595 Market Street, 16th Floor, San Francisco, California 94105.

I caused to be served by mail the following document(s):

DEFENDANT JOHNSON & CONSUMER PRODUCTS, INC.'S SUPPLEMENTAL RESPONSES TO PLAINTIFFS' SPECIAL INTERROGATORIES

I enclosed a true copy of said document(s) in an envelope, addressed as follows:

ATTORNEYS FOR PLAINTIFFS:

Kevin F. Quinn, Esq.
John J. Rice, Esq.
THORSNES, BARTOLOTTA, McGUIRE & PADILLA
2550 Fifth Avenue, Suite 1100
San Diego, CA 92103
(619) 236-9363
(619) 236-9653 FAX

ATTORNEYS FOR DEFENDANT AVON PRODUCTS, INC.

Regina A. Petty, Esq.
MAZZARELLA, DUNWOODY, WILSON & PETTY
550 West C Street, Suite 1050
San Diego, CA 92101-3532
(619) 236-9600
(619) 236-9669 FAX

**ATTORNEYS FOR DEFENDANT AMERICAN DRUG STORES
(erroneously sued as SAV-ON DRUG STORES)**

Joseph T. Kuryla, Esq.
CALLAHAN, McCUNE & WILLIS
402 West Broadway, Suite 800
San Diego, CA 92101
(619) 232-5700
(619) 232-2206 FAX

PREUSS, WALKER &
SHANAGHER
595 Market Street, 16th Floor
San Francisco, California
94105

INTERIM-DISCO-000000067

1 ATTORNEYS FOR DEFENDANT LONGS DRUG STORES CALIFORNIA, INC.

2 Scott R. Diamond, Esq.

3 Scott D. Buchholz, Esq.

4 DUMMIT, FABER & BRIEGLEB

5 750 B Street, Suite 1900

6 San Diego, CA 92101

7 (619) 231-7738

8 (619) 231-0886 FAX

9 I am readily familiar with my firm's practice for collection and processing
10 of correspondence for mailing with the United States Postal Service, to-wit, that
11 correspondence will be deposited with the United States Postal Service this same
12 day in the ordinary course of business. I sealed said envelope and placed it for
13 collection and mailing on April 20, 1994, following the ordinary business practice.

14 I declare under penalty of perjury under the laws of the State of California
15 that the above is true and correct. I further declare that I am employed in the
16 office of a member of the bar of this court at whose direction the service was
17 made.

18 Executed on April 20, 1994, at San Francisco, California.

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22 Beverly A. Lee
23 Beverly A. Lee
24
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27
28

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Exhibit 216

CAUSE NO. D-157,746

DARLENE COKER, ET AL

VS.

**BILL THAMES PHARMACY, INC.,
CORRIGAN ENTERPRISES, INC.
f/k/a JOHNSON-JOHNSON BABY f/k/a
S.W.S. PHARMACY INC., FERTITTAS
FINER FOODS, INC., GIANT FOOD
DISCOUNT CITY, INC., HENKE &
PILLOT, INC., HSTN. INC. f/k/a
J&J BABY PRODUCTS, JOHNSON &
JOHNSON PROFESSIONAL, LOVOI
AND SONS PHARMACIES, INC.,
MCNEIL PPC INC. PRODUCTS, THE
KROGER COMPANY**

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

136TH JUDICIAL DISTRICT

**DEFENDANTS' OBJECTIONS AND ANSWERS TO INTERROGATORIES AND
OBJECTIONS AND RESPONSES TO REQUEST FOR PRODUCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Johnson & Johnson Consumer Companies, Inc., Defendant in the above-styled and numbered cause, and files this its Objections and Answers to Interrogatories and Objections and Responses to Request for Production propounded to Defendant Johnson & Johnson Consumers Company, Inc.

MW/80804

EXHIBIT
28

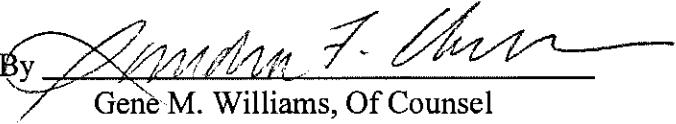
98 MAY -6 P4:45

[illegible]

Respectfully submitted,

MEHAFFY & WEBER

Attorneys for Johnson & Johnson
Professional, Inc. and McNeil PPC, Inc. f/k/a
Johnson-Johnson Baby Products

By 

Gene M. Williams, Of Counsel

State Bar No. 21535300

Sandra F. Clark

State Bar No. 04294520

Post Office Box 16
Beaumont, Texas 77704
Telephone: 409/835-5011
Telecopier: 409/835-5729

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been forwarded to all counsel of record on this the 6th day of May, 1998.


SANDRA F. CLARK

Preliminary Statement

Johnson & Johnson Consumer Companies, Inc. (hereinafter Johnson & Johnson) states that in the preparation of its responses to plaintiff's requests and interrogatories, it has made, and continues to make, a concerted good faith effort to collect all of the requested information or documents from Johnson & Johnson as well as any relevant predecessors and vendors. Defendant provides these preliminary responses with the understanding that information may change as discovery proceeds. Pursuant to agreement with plaintiff's counsel, defendant Johnson & Johnson provide these responses on behalf of Johnson & Johnson and reserves the right to make objections and to file responses for all other entities served by plaintiff's counsel in this lawsuit.

Johnson & Johnson will not produce any documents generated by its counsel directed to other counsel or to its officers, directors or employees regarding legal matters, and will not produce any documents generated by the officers, directors or employees regarding legal matters, and will not produce any documents generated by the officers, directors or employees of Johnson & Johnson to its counsel regarding legal matters. Johnson & Johnson will not produce any documents which are work-product drafted by attorneys employed by Johnson & Johnson. As for its responses to interrogatories, Johnson & Johnson state that when the requested information is readily available from documents, the documents will be produced as noted in individual interrogatory responses. When information or documents concerning incomplete research are requested, Johnson & Johnson state that they will produce published interim reports of such research. In response to requests for documents and interrogatories, Johnson & Johnson will produce information relevant to talc or baby powder.

Johnson & Johnson reserves the right to change its responses if it appears from additional research that omissions or errors have been made herein or that further or more accurate information should be provided. Furthermore, Johnson & Johnson has not completed preparation for trial. Because the responses contained herein are based only upon such information and documents which are presently available to or specifically known to Johnson & Johnson at the time the responses were prepared, the responses herein may be supplemented or changed upon continuing investigation.

This Preliminary Statement shall apply to each and every response given herein, and shall be incorporated by reference as though fully set forth in each of the responses appearing in the following pages.

OBJECTIONS AND ANSWERS TO INTERROGATORIES AND
OBJECTIONS AND RESPONSES TO REQUEST FOR PRODUCTION

Interrogatory No. 1

Please list the company name and location of each entity that packaged your baby powder from 1945 through 1975,

ANSWER: Baby powder was packaged at a variety of locations by Johnson & Johnson entities from 1945 through 1975. To the best of the company's knowledge, baby powder was not packaged by any non-Johnson & Johnson entity.

Request for Production No. 1

Please produce any and all documents responsive to Interrogatory No. 1.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Interrogatory No. 1 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loflin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Furthermore, defendant objects to the extent that plaintiff's request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 2

Did Johnson & Johnson ever sell baby powder under any name other than Johnson & Johnson between 1945 through 1975, and if so, what name and when?

ANSWER: No

Request for production No. 2

Please produce any and all documents responsive to Interrogatory No. 2.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Interrogatory No. 2 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loflin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Furthermore, defendant objects to the

extent that plaintiff's request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 3

Please list each location where your raw materials for Johnson & Johnson baby powder was mined from 1945 through 1975.

ANSWER: Based on defendants' current investigation and document review to date, from 1945 through 1975, talc was mined from the Val Chisone Mine in Italy, and the Hammondsville Mine in Vermont, U.S.A.

Request for Production No. 3

Please produce any and all documents responsive to Interrogatory No. 3.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Interrogatory No. 3 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Furthermore, defendant objects to the extent that plaintiff's request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 4

Please list all suppliers to Johnson & Johnson of raw or processed material used in Johnson & Johnson baby powder between 1945 and 1975.

ANSWER: Defendants object to this Interrogatory to the extent it calls for privileged or trade secret information. Subject to the foregoing objection, talc was supplied by Windsor Minerals (Hammondsville Mine, Vermont) and the Val Chisone Mine, Italy.

Request for Production No. 4

Please produce any and all documents responsive to Interrogatory No. 4.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Interrogatory No. 4 does not request documents. As such,

plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Furthermore, defendant objects to the extent that plaintiff's request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 5

Please list each claim made against you giving the style, court and date of filing, which involved an asbestos-related claim of injury and any talc product made or sold by you.

ANSWER: Defendant objects to this Interrogatory as beyond the scope of Rule 166(b)(2). The matters inquired of do not have a tendency to make any fact that is of consequence to this action more or less probable. Furthermore, Defendant objects to the extent Plaintiff's interrogatory seeks to evade the attorney/client, work product, party communication/investigatory and witness statement privileges. Subject to the foregoing objection, none.

Request for Production No. 5

Please produce any and all documents responsive to Interrogatory No. 5.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Interrogatory No. 5 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs' request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 6

Please list each epidemiological study any of your employees potentially occupationally exposed to talc made up all or part of the study cohort.

ANSWER: Defendant objects to this Interrogatory as beyond the scope of Rule 166(b)(2). The matters inquired of do not have a tendency to make any fact that is of consequence to this action more or less probable. Furthermore, Defendant objects to the extent Plaintiff's interrogatory seeks to evade the attorney/client, work product, party communication/investigatory and witness statement privileges. Subject to the foregoing objections, defendant's investigation is

ongoing . Defendant will supplement this interrogatory with non-objectionable information as it is discovered.

Request for Production No. 6

Please produce all documents responsive to Interrogatory No. 6.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce “all documents” responsive to Interrogatory No. 6. Interrogatory No. 6 does not request documents. As such, plaintiffs’ request is overbroad, vague, unintelligible, and constitutes a “fishing expedition” such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs’ request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 7

Please list each location where your baby powder was packaged from 1945 through 1975.

ANSWER: Object - Question is repetitious and duplicative of Interrogatory No. 1. Subject to the foregoing objection, see Answer to Interrogatory No. 1.

Request for Production No. 7

Please produce all documents responsive to Interrogatory No. 7.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce “all documents” responsive to Interrogatory No. 7. Interrogatory No. 7 does not request documents. As such, plaintiffs’ request is overbroad, vague, unintelligible, and constitutes a “fishing expedition” such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs’ request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 8

What year did your baby powder change from talc to corn starch?

ANSWER: Johnson's Baby Powder made with talc has been available from 1945 through 1975 and is currently sold; Johnson's Baby Powder with corn starch was first marketed in 1978.

Request for Production No. 8

Please produce any and all documents responsive to Interrogatory No. 8.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce "all documents" responsive to Interrogatory No. 8. Interrogatory No. 8 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs' request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 9

Please list all persons known by you who:

- a) ever recommended changing from talc to corn starch for baby powder product;
- b) ever made any analysis of your baby powder for fibrous material content;
- c) ever made any analysis of your baby powder for asbestiform material;
- d) ever surveyed your mine(s) for the geological structure prior to or during mining;
- e) ever made any analysis of raw and/or processed material used or considered for use in your baby powder for fibrous material content;
- f) ever made any analysis of raw and/or processed material used or considered for use in your baby powder for asbestiform mineral.

ANSWER: Defendant objects to the overbroad nature of plaintiffs' requests. Identifying all persons without limitation to time, scope, and employment, is unduly burdensome. To identify all persons over the company's 100+ year history is not possible.

a) Defendants object to sub-part (a) as vague and that it is unlimited to time and scope. In addition plaintiff's interrogatory is vague, unduly burdensome, and unlikely to lead to the discovery of relevant evidence. Furthermore,

defendant objects to the extent that it is covered by the attorney/client, work product, party communication/investigatory privileges, and witness statement privileges. Subject to the foregoing objections, defendant's investigation is ongoing. Defendant will supplement its response to this interrogatory as non-objectionable information is discovered.

b) Defendants object to sub-part (b) as vague and overbroad in that it is unlimited to time and scope. In addition plaintiff's interrogatory is vague, unduly burdensome, and unlikely to lead to the discovery of relevant evidence. Furthermore, defendant objects to the extent that it is covered by the attorney/client, work product, party communication/investigatory privileges, and witness statement privileges. Subject to the foregoing objections, analysis have been conducted by certain employees of Johnson & Johnson, McCrone Associates, E.S. Laboratories, Colorado School of Mines Research Institute, and Baine Environmental.

c) Defendants object to sub-part (c) as vague and overbroad in that it is unlimited to time and scope. In addition plaintiff's interrogatory is vague, unduly burdensome, and unlikely to lead to the discovery of relevant evidence. Furthermore, defendant objects to the extent that it is covered by the attorney/client, work product, party communication/investigatory privileges, and witness statement privileges. Subject to the foregoing objections, analysis have been conducted by certain employees of Johnson & Johnson, McCrone Associates, E.S. Laboratories, Colorado School of Mines Research Institute, and Baine Environmental.

d) Defendants object to sub-part (d) in that it is vague, overbroad, and unlimited in time and scope. In addition plaintiff's interrogatory is vague, unduly burdensome, and unlikely to lead to the discovery of relevant evidence. Subject to the foregoing objections, analysis may have been conducted by McCrone Associates, and Colorado School of Mines Research Institute.

e) Defendants object to sub-part (e) as vague, overbroad, and that it is unlimited to time and scope. In addition plaintiff's interrogatory is vague, unduly burdensome, and unlikely to lead to the discovery of relevant evidence. Furthermore, defendant objects to the extent that it is covered by the attorney/client, work product, party communication/investigatory privileges, and witness statement privileges. Subject to the foregoing objections, analysis have been conducted by certain employees of Johnson & Johnson, McCrone Associates, E.S. Laboratories, Colorado School of Mines Research Institute, and Baine Environmental.

f) Defendants object to sub-part (f) as vague, overbroad and that it is unlimited

to time and scope. In addition plaintiff's interrogatory is vague, unduly burdensome, and unlikely to lead to the discovery of relevant evidence. Furthermore, defendant objects to the extent that it is covered by the attorney/client, work product, party communication/investigatory privileges, and witness statement privileges. Subject to the foregoing objections, analysis have been conducted by certain employees of Johnson & Johnson, McCrone Associates, E.S. Laboratories, Colorado School of Mines Research Institute, and Baine Environmental.

Request for Production No. 9

Please produce any and all documents responsive to Interrogatory No. 9.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce "all documents" responsive to Interrogatory No. 9. Interrogatory No. 9 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs' request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 10

Please identify any person having knowledge of relevant facts. A fact witness is a person who "has or may have knowledge of any discoverable matter." As to each witness, please provide the following:

- a. Name;
- b. Address;
- c. Telephone number;
- d. Knowledge and opinions of the witness.

ANSWER: Defendant objects to this Interrogatory as vague and overbroad. The identity of fact witnesses over the 100+ history in which plaintiff requests is virtually impossible to determine all persons who may have facts relevant to this case. Subject to the above objections defendant's investigation is continuing and Defendant's will supplement.

Request for Production No. 10

Please produce any and all documents responsive to Interrogatory No. 10.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce “all documents” responsive to Interrogatory No. 10. Interrogatory No. 10 does not request documents. As such, plaintiffs’ request is overbroad, vague, unintelligible, and constitutes a “fishing expedition” such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs’ request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 11

Please provide the following information as to each testifying expert:

- a. Name;
- b. Address;
- c. Telephone Number;
- d. Facts known by the testifying expert;
- e. Expected substance of testimony of each testifying expert, the mental impressions and opinions of each testifying expert, and any report or other documents prepared by each expert in anticipation of trial.

ANSWER: Defendant objects to this interrogatory as unduly burdensome, vague, and beyond the scope of permissible discovery. Specifically, it is not possible for defendant to list all facts, mental impressions, and opinions known to the testifying expert. Defendant will supplement this interrogatory in accordance with Rule 166(b).

Request for Production No. 11

Please produce any and all documents responsive to Interrogatory No. 11.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce “all documents” responsive to Interrogatory No. 11. Interrogatory No. 11 does not request documents. As such, plaintiffs’ request is overbroad, vague,

unintelligible, and constitutes a “fishing expedition” such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Furthermore, defendant objects to the extent that plaintiff’s request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

(THERE IS NO INTERROGATORY NO. 12)

Request for Production No. 12

As to each testifying expert, please produce any documents, tangible things, physical models, or compilations of data or other material prepared by testifying expert.

RESPONSE: Defendant objects to this request as vague, overbroad, unduly burdensome, and not likely to lead to the discovery of relevant evidence. Defendant is willing to exchange trial exhibits with plaintiff by court order or by agreement of the counsel.

Interrogatory No. 13

Please describe any and all studies of asbestos or asbestiform talc disease in which you , the defendant, participated.

ANSWER: Defendant objects to this interrogatory as vague, overbroad, and unduly burdensome, and not likely to lead to the discovery of relevant evidence. Plaintiff’s interrogatory is unlimited in time and scope and is not confined to the issues in this case. Defendant further objects to the extent that plaintiff’s interrogatory seeks to evade the attorney/client, work product, party communications/investigatory, and witness statement privileges. Subject to the foregoing objections, defendant’s investigation is continuing and defendant will supplement with non-objectionable information as it is discovered.

Request for Production No. 13

Please produce any and all documents responsive to Interrogatory No. 13.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce “all documents” responsive to Interrogatory No. 13. Interrogatory No. 13 does not request documents. As such, plaintiffs’ request is overbroad, vague, unintelligible, and constitutes a “fishing expedition” such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989).

Defendant further objects to the extent that plaintiffs' request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges. Subject to the foregoing objections, defendant's investigation is ongoing. Defendant will make non-objectionable documents available for inspection and copying at a mutually agreeable time and place as they are discovered.

Interrogatory No. 14

Please describe any and all studies of asbestos or asbestiform talc disease in which you, the defendant, were aware of as of :

- a. 1940;
- b. 1950;
- c. 1970;
- d. 1972

ANSWER: Defendant objects to this interrogatory as vague, and overbroad, and not calculated to lead to discovery of relevant evidence. It is impossible to determine what study any individual employee of Defendant was aware of by a certain date.

Request for Production No. 14

Please produce any documents responsive to Interrogatory No. 14.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce "all documents" responsive to Interrogatory No. 14. Interrogatory No. 14 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs' request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 15

Each workers' compensation claim for an alleged asbestos or asbestiform talc injuries, disease or death of an employee which could be used to evaluate the risk of developing an asbestos or asbestiform talc disease and/or providing knowledge to you of asbestos or asbestiform talc.

ANSWER: Defendants object to this Interrogatory in that it is vague, ambiguous, overly broad and compound. Furthermore, this interrogatory will call for a legal conclusion. Subject to the foregoing objections, defendant's investigation is ongoing. Defendant is not aware of any workers compensation claim alleging either asbestos or an asbestiform talc disease by any employee of Johnson & Johnson.

Interrogatory No. 16

Please state if any air sampling was done to determine the exposure to your baby powder during its normal and intended use.

ANSWER: Defendants object to this interrogatory as vague, overbroad, unduly burdensome, and not likely to lead to the discovery of relevant evidence. Furthermore, this interrogatory is not limited to time or scope.

Request for Production No. 15

Please produce any and all documents responsive to Interrogatory No. 16.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce "all documents" responsive to Interrogatory No. 16. Interrogatory No. 16 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs' request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 17

Please identify each mineralogist employed by you and/or consulted by you at any time before 1975. Please provide the last known address, telephone number, vital status and dates of employment and/or consultation.

ANSWER: Defendants object to plaintiffs' request in that it is duly burdensome and overbroad for defendants to list every mineralogist that may have been consulted with prior to 1975. Subject to the foregoing objections, certain employees listed in response to Interrogatory No. 9 may be mineralogist. Defendant's investigation is ongoing. Defendant will supplement this interrogatory as persons are identified.

Request for Production No. 16

Please produce any and all documents responsive to Interrogatory No. 17.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce “all documents” responsive to Interrogatory No. 17. Interrogatory No. 17 does not request documents. As such, plaintiffs’ request is overbroad, vague, unintelligible, and constitutes a “fishing expedition” such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs’ request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 18

Please identify each physician employed by you at any time before 1975. Please provide the last known address, telephone number, vital status and dates of employment.

ANSWER: Defendants object to plaintiffs’ request in that it is unduly burdensome and overbroad for defendants to list every physician employed prior to 1975. Subject to the foregoing objection, Defendant will supplement as persons are identified.

Interrogatory No. 19

Please identify each geologist employed by you an/or consulted by you at any time before 1975. Please provide the last known address, telephone number, vital status and dates of employment and/or consultation.

ANSWER: Defendants object to plaintiffs’ request in that it is unduly burdensome and overbroad for defendant to list every geologist that may have been consulted with prior to 1975. Subject to the foregoing objections, certain employees listed in response to Interrogatory No. 9 may be geologist. Defendant’s investigation is ongoing. Defendant will supplement this interrogatory as persons are identified.

Interrogatory No. 20

Each document evidencing health warnings provided by you or to you before 1975 concerning the asbestos material or asbestos-containing products:

- a. used by you as an ingredient of a product;
- b. made by another and marketed by you.

ANSWER: a) Defendants object to plaintiffs' Interrogatory No. 20 in that it is vague and ambiguous. Subject to the foregoing objections, no warning related to asbestos would be applicable or required.

b) Defendants object to plaintiffs' Interrogatory No. 20 in that it is vague and that it does not identify warning related to what product. Subject to the foregoing objection, defendant has not marketed an asbestos containing product manufactured by another.

Interrogatory No. 21

Please identify each industrial hygienist employed by you and/or consulted by you at any time before 1975. Please provide the last known address, telephone number, vital status and dates of employment and/or consultation.

ANSWER: Defendants object to plaintiffs' request in that it is unduly burdensome and overbroad for defendants to list every industrial hygienist that may have been consulted with prior to 1975. Subject to the foregoing objection, Defendant will supplement as persons are identified.

Interrogatory No. 22

Documents which describe the asbestos content or absence of asbestos in your baby powder sold or manufactured by you or related companies of yours from 1945 through 1975.

ANSWER: Defendants object to this interrogatory as vague, ambiguous, and unintelligible. Specifically, the interrogatory does not ask a question but merely makes a statement, and therefore, as such can not be answered and should be rephrased. Subject to the foregoing objections, defendant's investigation is ongoing. Defendant will supplement its response to this interrogatory as information is discovered.

Interrogatory No. 23

Please list each and every mine that was utilized by your company for talc. Please include complete address and dates of use.

ANSWER: Defendants object to this Interrogatory as over broad in that it is not limited to time or to cosmetic talc. Subject to the foregoing objections, Defendant answers, from 1945 until approximately 1964 from Val Chisone, Italy and from

1964 until approximately 1975 from Hammondsville Mine, Vermont, U.S.A.

Request for Production No. 17

Each workers' compensation claim or notice of injury filed before 1980 for any allegation of asbestos or asbestiform talc illnesses, including without limitation, asbestosis, pneumoconiosis, or mesothelioma.

RESPONSE: Defendant objects to plaintiffs' request as vague, overbroad, unduly burdensome, and not likely lead to the discovery of relevant evidence. Plaintiff's request is not limited in time and scope or to any specific entity. Plaintiff's request does not identify from whom it is requesting documents. Subject to the foregoing objections, defendant has no documents responsive to this request.

Request for Production No. 18

Please produce each version of your "corporate biography" or published company history, whether an in-house effort, and "authorized" version or otherwise.

RESPONSE: Defendants object to this request as overbroad, vague, unduly burdensome, and not likely to lead to the discovery of any relevant evidence. Further, plaintiff's request is not limited in time or scope.

Request for Production No. 19

Documents evidencing:

- a. the identity of each of your insurer(s), including property loss, workers' compensation and general liability;
- b. the extent of your yearly liability coverage relative to the claims raised to this suit.

RESPONSE: Defendants object to this request as vague, overbroad and likely to lead to the discovery of relevant evidence. Furthermore, plaintiff's request is not limited in either time or scope. Subject to the foregoing objections, for the years of exposure Johnson & Johnson Consumer Companies, Inc., had coverage for claims provided through self insurance and The Aetna Property & Casualty Company in varying amounts ranging from 1.5 million through 50 million.

Request for Production No. 20

Research or studies which you, the defendant, possess conducted by NIOSH, Vermont Health Department, Mining Enforcement and Safety Administration (MESA), OSHA, and/or Walter C.

McCrone and Associates concerning asbestos or asbestiform talc illnesses.

RESPONSE: Defendant objects to this request as vague, overbroad, unduly burdensome, and not calculated to lead to the discovery of relevant evidence. Defendant's document review is ongoing. Defendants will make non-objectionable documents available for copying and inspection at a mutually agreeable time and place as they are discovered.

Request for Production No. 21

Please provide a complete copy of "Talc: A Possible Occupational and Environmental Carcinogen", authored by H.P. Blejer and R. Arlon, 1973, showing who received each copy.

RESPONSE: Defendant objects to this request to the extent that it calls for documents subject to the attorney/client, party communications, work product, investigative and witness statement privileges. Subject to the foregoing objections, documents responsive to this request will be made available at a mutually agreeable place and time.

Request for Production No. 22

Please provide a copy of "The Biology of Talc", Brit. J. Ind. Med. 33: 217, 1976, authored by G.Y. Hildick-Smith, showing who received each copy.

RESPONSE: Defendant objects to this request to the extent that it calls for documents subject to the attorney/client, party communications, work product, investigative and witness statement privileges. Subject to the foregoing objections, documents responsive to this request will be made available for inspection and copying at a mutually agreeable time and place.

Request for Production No. 23

Research or studies conducted by or with any trade associations that in any way discuss asbestos or asbestiform minerals in consumer products prior to 1975.

RESPONSE: Defendant objects to this request as overbroad, vague, not likely to lead to the discovery of relevant evidence. Further, plaintiff's request is not limited in time and scope or to projects in which Defendant participated. Furthermore, Defendant objects to the extent that it calls for documents subject to the attorney/client, party communications, work product, investigative and witness statement privileges. Subject to the foregoing objections, defendant's investigation is ongoing. Defendant will make documents responsive to this

request available for copying and inspection at a mutually agreeable time and place as they are discovered.

Request for Production No. 24

Produce each air sampling results for dust, including asbestos or asbestiform minerals at your mining, milling and packaging plants.

RESPONSE: Defendant objects to this request as overbroad, vague, and not likely to lead to the discovery of relevant evidence. Further, plaintiff's request is limited in time or scope. Defendant objects to this request to the extent that it calls for documents subject to the attorney/client, party communications, work product, investigative and witness statement privileges. Defendants document review is ongoing. Non-objectionable documents responsive to this request will be made available for inspection at a mutually convenient time and place as they are discovered.

Request for Production No. 25

Documents not dated greater than 1975 which mention compliance with or changes to, or proposed changes to, any regulations, statutes, rules or standards for the use or handling of materials which yield pneumoconiosis producing dust, including asbestosis or mesothelioma.

RESPONSE: Defendant objects to this request to the extent that it calls for documents subject to the attorney/client, party communications, work product, investigative and witness statement privileges. Further, plaintiff's request is vague, overbroad and not calculated to lead to the discovery of relevant evidence. Further, plaintiff's request is not limited to time or scope. Subject to the foregoing objections, defendants will make non-objectionable documents that are responsive to this request available for copying and inspection at a mutually agreeable time and place as they are discovered.

Request for Production No. 26

Documents not dated greater than 1975 which mention proposed or prescribed warnings, cautions or instructions regarding the potential health hazards or pneumoconiosis-producing dust, including asbestos or asbestiform minerals for use upon or in your baby powder, your manuals or catalogs ("catalogs" means those documents regarding products made or sold by you, the defendant and your product literature).

RESPONSE: Defendant objects to this request to the extent that it calls for documents subject to the attorney/client, party communications, work product, investigative and

witness statement privileges. Further, plaintiff's request is vague, overbroad and not calculated to lead to the discovery of relevant evidence. Further, plaintiff's request is not limited to time or scope. Subject to the foregoing objections, defendants will make non-objectionable documents that are responsive to this request available for copying and inspection at a mutually agreeable time and place as they are discovered.

Request for Production No. 26

Please produce all documents provided to your sale and/or marketing organization which concern asbestos being found or not being found in baby powder.


RESPONSE: Defendant objects to this request to the extent that it calls for documents subject to the attorney/client, party communications, work product, investigative and witness statement privileges. Further, plaintiff's request is vague, overbroad and not calculated to lead to the discovery of relevant evidence. Further, plaintiff's request is not limited to time or scope. Subject to the foregoing objections, defendants will make non-objectionable documents that are responsive to this request available for copying and inspection at a mutually agreeable time and place as they are discovered.

VERIFICATION

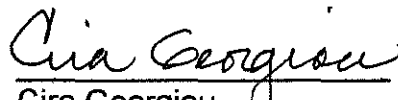
STATE OF NEW JERSEY §

COUNTY OF MIDDLESEX §

BEFORE ME, the undersigned authority, on this day personally appeared Michael Ullmann, who being by me here and now duly sworn upon oath says that he is Secretary of Johnson & Johnson Consumer Companies, Inc., duly authorized to verify the statements contained in the foregoing instrument for and on behalf of Johnson & Johnson Consumer Companies, Inc., that certain of these matters stated herein are not within the personal knowledge of affiant, and that the facts stated herein have been assembled by authorized agents, employees and counsel of Johnson & Johnson Consumer Companies, Inc., and affiant is informed that the facts stated therein are true.


Michael Ullmann

SUBSCRIBED AND SWORN TO BEFORE ME by the said affiant
on this the 7th day of May, 1998.


Cira Georgiou
Notary Public in and for
The State of New Jersey

My commission expires: January 5, 1999

Exhibit 217

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

October 27, 1997

Via Hand-Delivery

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

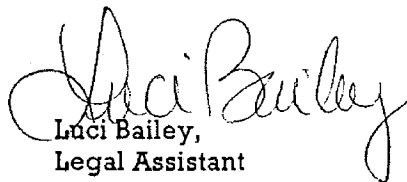
Dear Mr. Appleman:

Enclosed for filing in the above-referenced case, please find Affidavit of Return of
Service by Authorized Person, along with executed citations as to the following
defendants:

- 1) McNeil PCC Inc.
- 2) Fertittas Finer Foods Inc.
- 3) Lovio and Sons Pharmacies Inc.
- 4) Bill Thames Pharmacy Inc.
- 5) Henke and Pillot Inc. Houston
- 6) Giant Food Discount City Inc.
- 7) Kroger Co.

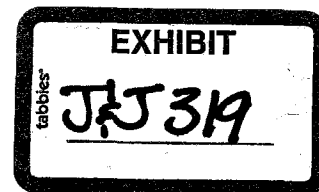
Thank you for your attention in this regard.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/dm

Enclosures



THE STATE OF TEXAS
136th JUDICIAL DISTRICT COURT
JEFFERSON COUNTY, TEXAS

Darlene Coker et vir	\$	
VS.	\$	No D-0157746
Bill Thames Pharmacy Inc et al	\$	

AFFIDAVIT OF RETURN OF SERVICE BY
AUTHORIZED PERSON

STATE OF TEXAS

COUNTY OF JEFFERSON

BEFORE ME, the undersigned authority, on this day personally appeared KATHY VIATOR who, being sworn, did depose as follows:

"My name is KATHY VIATOR. I am over 18 years of age, of sound mind and fully qualified to make this affidavit, and have never been convicted of a crime. I have personal knowledge of the facts stated below.

“Attached is the following true and correct copy of the citation which I served via Certified Mail, Return Receipt Requested, on the following Defendant:

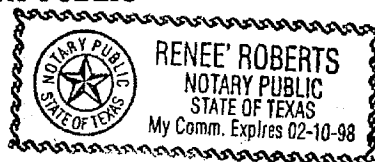
McNeil PCC Inc.....	Exhibit A
Fertittas Finer Foods Inc.....	Exhibit B
Lovoi and Sons Pharmacies Inc	Exhibit C
Bill Thames Pharmacy Inc.....	Exhibit D
Henke and Pillot Inc Houston	Exhibit E
Giant Food Discount City Inc	Exhibit F
Kroger Co.	Exhibit G

"Further affiant sayeth not."

Katherine R. Viator
KATHERINE R. VIATOR

SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this 2nd day of October, 1997, to certify which witness my hand and seal of office.

NOTARY PUBLIC



LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

FILED
DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

'98 APR 30 P4:36

April 30, 1998

Via Hand-Delivery

JOHN S. APPLEMAN
DISTRICT CLERK

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

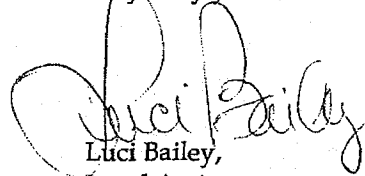
RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

In accordance with the Emergency Rule for Filing Discovery and Materials in the District
Courts of Jefferson County, Texas, this letter serves as notice that by copy of this letter, I am
serving all counsel of record with Plaintiffs' 4/30/98 Responses to Defendant, Johnson &
Johnson Professional Inc., Requests for Production.

Thank you for your assistance in this matter.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/dm

Enclosure

cc: Mr. Gene Williams..... Via Hand-Delivery
Mr. Roger Worthington Via Facsimile

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

December 5, 1997

TO: ALL COUNSEL OF RECORD

**RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0**

Dear Counsel:

Enclosed please find Plaintiff's 12/5/97 Answers To Defendants' Master Set Of
Interrogatories in connection with the above-referenced case.

Thank you for your attention in this regard.

Very truly yours,

Luci Bailey,
Legal Assistant

JOHN S. APPLEMAN
DISTRICT CLERK

97 DEC -5 P4:42

FILED
CLERK OF DISTRICT COURT
JEFFERSON COUNTY, TEXAS

/lb/dm

Enclosure

cc: Mr. John Appleman..... Via Hand-Delivery
Mr. Brock C. Akers Via UPS
Mr. Daniel Foley Via UPS
Mr. Eric D. Wewers Via UPS
Mr. Gary J. Siller Via UPS
Mr. Gene Williams..... Via Hand-Delivery
Mr. James M. Harris, Jr..... Via Hand-Delivery
Mr. Kent M. Adams Via Hand-Delivery
Mr. Richard Corrigan Via UPS

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

SH

May 26, 1998

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

In accordance with the Emergency Rule for Filing Discovery and Materials in the District
Courts of Jefferson County, Texas and Texas Civil Practices and Remedies Code, §18.001, the
following affidavits are being served on all counsel:

- Affidavit of Denise C. Bonavita, custodian of records for Dana-Farber Cancer Institute,
(1 page of billing records)
- Affidavit of Scott Dare, custodian of records for Diagnostic Clinic, (4 pages of billing
records)

Said records are available for copying at a cost of \$.25 per page.

Thank you for your assistance in this matter.

Very truly yours,

Luci Bailey
Luci Bailey,
Legal Assistant

JOHN S. APPLEMAN
DISTRICT CLERK

98 MAY 27 AM 1:58

FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS

/lb/dm

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

98 JUN 16 P3:09

June 15, 1998

Via Hand-Delivery

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

In accordance with the Emergency Rule for Filing Discovery and Materials in the District
Courts of Jefferson County, Texas, this letter serves as notice that by copy of this letter, I am
serving all counsel of record with Plaintiffs' 6/15/98 Cross Notice of Video Depositions.

Thank you for your assistance in this matter.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/db

cc: Mr. Roger Worthington
Mr. Gene Williams
Legal Images

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

98 MAY 15 P4:53
JEFFERSON COUNTY

May 15, 1998

Via Hand-Delivery

JOHN S. APPLEMAN
DISTRICT CLERK

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

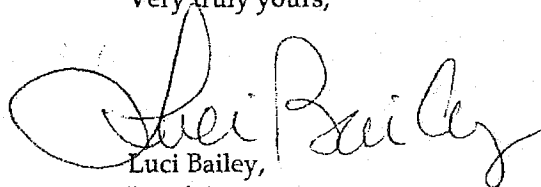
Dear Mr. Appleman:

Enclosed for filing in the above-referenced case, please find **Plaintiffs' 5/15/98 Cross-Notice of Video Deposition of Melba Adams.**

All counsel of record are being furnished a copy of same.

Thank you for your attention in this regard.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/dm

Enclosure

cc: Roger Worthington
Gene Williams

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

'98 MAY 14 P4:42

May 14, 1998

Via Hand-Delivery
JOHN S. APPLEMAN
DISTRICT CLERK

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

In accordance with the Emergency Rule for Filing Discovery and Materials in the District
Courts of Jefferson County, Texas and Texas Civil Practices and Remedies Code, §18.001, the
following affidavits are being served on all counsel:

- Affidavit of Laurie Hinds, custodian of records for Outpatient Diagnostic Center, (8 pages of billing records)
- Affidavit of Nicole Lazard, custodian of records for Dr. A. Aldridge, (1 page of billing records)
- Affidavit of Nick White, custodian of records for Brigham and Women's Hospital, (7 pages of billing records)

Said records are available for copying at a cost of \$.25 per page.

Thank you for your assistance in this matter.

Very truly yours,

Darla Moore

Darla Moore
Secretary to Herschel Hobson

/dm

cc: Mr. Roger Worthington
Mr. Gene Williams

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

FILED
DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

'98 MAY 14 P4:47

May 14, 1998

Via Hand-Delivery

JOHN S. APPLEMAN
DISTRICT CLERK

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

In accordance with the Emergency Rule for Filing Discovery and Materials in the District
Courts of Jefferson County, Texas and Texas Civil Practices and Remedies Code, §18.001, the
following affidavits are being served on all counsel:

- Affidavit of Laurie Hinds, custodian of records for Outpatient Diagnostic
Center, (8 pages of billing records)
- Affidavit of Nicole Lazard, custodian of records for Dr. A. Aldridge, (1 page of
billing records)
- Affidavit of Nick White, custodian of records for Brigham and Women's
Hospital, (7 pages of billing records)

Said records are available for copying at a cost of \$.25 per page.

Thank you for your assistance in this matter.

Very truly yours,

Darla Moore

Darla Moore
Secretary to Herschel Hobson

/dm

cc: Mr. Roger Worthington
Mr. Gene Williams

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

May 4, 1998

Via Hand-Delivery

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

FILED
DISTRICT COURT
JEFFERSON COUNTY, TEXAS
98 MAY -4 P 3:58

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

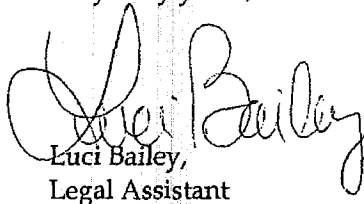
In accordance with the Emergency Rule for Filing Discovery and Materials in the District
Courts of Jefferson County, Texas and Texas Civil Practices and Remedies Code, §18.001, the
following affidavits are being served on all counsel:

- Affidavit of Conne B. Neel, custodian of records for Texas Oncology-Southeast Texas
Cancer Center f/k/a Mamie McFaddin Ward Cancer Treatment Center, (71 pages of
medical records)
- Affidavit of Conne B. Neel, custodian of records for Texas Oncology-Southeast Texas
Cancer Center f/k/a Mamie McFaddin Ward Cancer Treatment Center, (13 pages of
billing records)

Said records are available for copying at a cost of \$.25 per page.

Thank you for your assistance in this matter.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/dm

cc: Mr. Gene Williams

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

April 30, 1998

Via Hand-Delivery

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

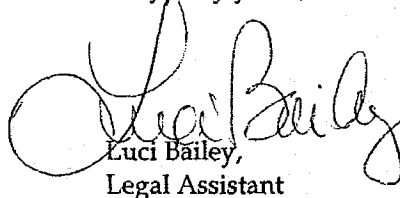
In accordance with the Emergency Rule for Filing Discovery and Materials in the District
Courts of Jefferson County, Texas and Texas Civil Practices and Remedies Code, §18.001, the
following affidavits are being served on all counsel:

- Affidavit of Sharon Caskey, custodian of records for M.D. Anderson Cancer Center,
(3 pages of billing records)
- Affidavit of James E. Crites, custodian of records for M.D. Anderson Physician Referral,
(5 pages of billing records)

Said records are being forwarded to opposing counsel via hand-delivery.

Thank you for your assistance in this matter.

Very truly yours,


Luci Bailey,
Legal Assistant

JOHN S. APPLEMAN
DISTRICT CLERK

98 MAY -1 P 4:04

FILED
DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

/lb/dm

cc: Mr. Gene Williams..... Via hand-delivery

Handwritten initials

AFFIDAVIT

STATE OF Texas *
COUNTY OF Harris *

BEFORE ME, the undersigned authority, personally appeared

Sharon Caskey, who being by me duly sworn deposed as follows:

My name is Sharon Caskey. I am of sound mind and capable of making this affidavit, and personally acquainted with the facts herein states:

I am the custodian of records for **M. D. Anderson Cancer Center**. Attached hereto are billing records pertaining to **Darlene Coker**. These said records are kept by **M. D. Anderson Cancer Center** in the regular course of business, and it was the regular course of business of **M. D. Anderson Cancer Center** for an employee or representative of **M. D. Anderson Cancer Center**, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time of reasonably soon thereafter.

The service provided was necessary and the amount charged for the service was reasonable at the time and place that the service was provided.

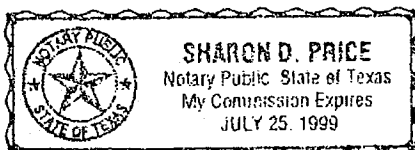
Sharon Caskey
AFFIANT

JOHN S. ALPERMAN
DISTRICT CLERK

MAY -1 P 4:04

FILED
DISTRICT COURT OF
JEFFERSON COUNTY TEXAS

SWORN TO AND SUBSCRIBED Before Me on this 27 day of April, 1998.



Sharon D. Price
NOTARY PUBLIC, In and For the
State of Texas
My Commission expires: 7/25/99

AFFIDAVIT

STATE OF Texas *

COUNTY OF Harris *

BEFORE ME, the undersigned authority, personally appeared

James E. Crites, who being by me duly sworn depose as follows:

My name is James E. Crites. I am of sound mind and

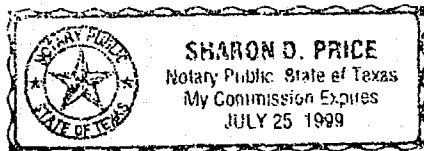
capable of making this affidavit, and personally acquainted with the facts herein states:

I am the custodian of records for M. D. Anderson Physician Referral. Attached hereto are **billing records** pertaining to **Darlene Coker**. These said records are kept by **M. D. Anderson Physician Referral** in the regular course of business, and it was the regular course of business of **M. D. Anderson Physician Referral** for an employee or representative of **M. D. Anderson Physician Referral**, with knowledge of the act, event, condition, opinion, or diagnosis, recorded to make the record or to transmit information thereof to be included in such record; and the record was made at or near the time or reasonably soon thereafter.

The service provided was necessary and the amount charged for the service was reasonable at the time and place that the service was provided.

James E. Crites
AFFIANT

SWORN TO AND SUBSCRIBED Before Me on this 27 day of April, 1998.



Sharon D. Price
NOTARY PUBLIC, In and For the

State of Texas

My Commission expires: 7/25/99

000000

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

March 20, 1998

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT
COURT OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

In accordance with the Emergency Rule for Filing Discovery and Materials in the District Courts of Jefferson County, Texas, this letter serves as notice to all counsel of record that the following documents are available for copying at a cost of \$.25 per page:

- 1) Affidavit of Juanita Rodriguez, Custodian of Record for Dr. Richard C. Geis, along with **medical records**, totaling 9 pages;
- 2) Affidavit of Linda S. Woods, Custodian of Records for Columbia Beaumont Medical Center, along with **medical records** totaling 62 pages.
- 3) Affidavit of Lorelei Johnson, Custodian of Records for Dr. Ron Eager, along with **billing records** totaling 12 pages.
- 4) Affidavit of Michael Sanders, Custodian of Records for Diagnostic Hospital, along with **billing records** totaling 4 pages.
- 5) Affidavit of Nicole Mathes, Custodian of Records for M.D. Anderson Cancer Center, along with **medical records** totaling 39 pages.

Thank you for your assistance in this matter.

Very truly yours,

Luci Bailey,
Legal Assistant

JOHN S. APPLEMAN
DISTRICT CLERK

98 MAR 23 P 4:28

FILED
DISTRICT COURT #4
JEFFERSON COUNTY TEXAS

/lb/dm -

cc: Mr. Gene Williams..... Via facsimile

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS

CSB

'98 APR 21 P 4:30

April 21, 1998

Via Hand-Delivery

JOHN S. APPLEMAN
DISTRICT CLERK

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

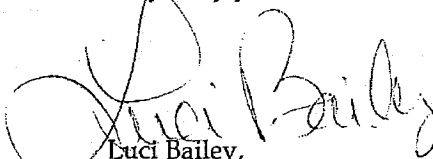
RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

In accordance with the Emergency Rule for Filing Discovery and Materials in the District
Courts of Jefferson County, Texas, and Texas Civil Practices and Remedies Code, §18.001,
attached hereto is the affidavit of Kathi Manuel, custodian of records for Beaumont
Radiology Group. The billing records consist of one (1) page and are, therefore, being
provided to opposing counsel via facsimile.

Thank you for your assistance in this matter.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/dm

Enclosure

cc: Mr. Gene Williams..... Via facsimile

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS

'98 APR 21 P4:30

April 21, 1998

JOHN S. APPLEMAN
DISTRICT CLERK

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

In accordance with the Emergency Rule for Filing Discovery and Materials in the District
Courts of Jefferson County, Texas, and the Texas Civil Practices and Remedies Code,
§18.001, attached hereto is the following affidavit:

- Affidavit of John J. Godleski, custodian of records for Dr. John Godleski

The medical records consist of three (3) pages and are, therefore, being provided to
opposing counsel via facsimile.

Thank you for your assistance in this matter.

Very truly yours,

Darla Moore

Darla Moore
Secretary to Herschel Hobson

/dm

cc: Mr. Roger Worthington Via facsimile
Mr. Gene Williams Via facsimile

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

FILED
DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

'98 MAY 28 P4:25

May 28, 1998

Via Hand-Delivery
JOHN S. APPLEMAN
DISTRICT CLERK

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

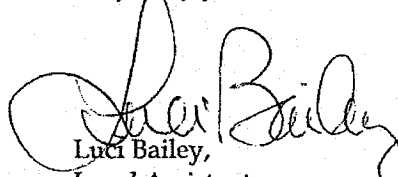
Enclosed for filing in the above-referenced case, please find the following:

- Deposition on Written Questions to the Custodian of Records for Colorado School of Mines Research Institute;
- Deposition on Written Questions to the Custodian of Records for E.S. Laboratories;
- Deposition on Written Questions to the Custodian of Records for McCrone Associates

All counsel of record are being furnished a copy of same.

Thank you for your attention in this regard.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/dm

cc: Mr. Roger Worthington
Mr. Gene Williams

CAUSE NO. D-157,746

DARLENE COKER, and spouse,
ROY COKER

vs.

BILL THAMES PHARMACY, INC., ET AL

§
§
§
§
§

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

136TH JUDICIAL DISTRICT

FILED
DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

'98 MAY 28 P4:25

JOHN S. APPLEMAN
DISTRICT CLERK

DEPOSITION ON WRITTEN QUESTIONS

TO: Custodian of records for COLORADO SCHOOL OF MINES RESEARCH INSTITUTE, 1500 Illinois Street, Golden, Colorado 80401

You will please take notice that on June 15, 1998, a deposition by written questions will be taken of Colorado School of Mines Research Institute, 1500 Illinois Street, Golden, Colorado 80401, before a Notary Public or person authorized to administer oaths in the State of Colorado on behalf of Nell McCallum & Associates, and/or officers and/or agents, 2615 Calder, Suite 111, Beaumont, TX 77702, for the taking of this deposition.

The deposition with attached questions and any cross-questions timely served may be used as evidence in the trial of the above-styled and numbered cause pending in the above-named Court.

Notice is further given that request is hereby made as authorized under Rules 188 and 208 of the Texas Rules of Civil Procedure to issue a subpoena and have it served on the witness directing him to produce all documents in his possession pertaining to the attached written questions.

DEFINITIONS

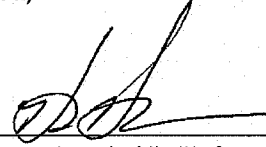
1. The term "document" means all writings of any kind, including written, recorded, including electronic and magnetic recordings, or graphic matter, however produced or reproduced. It includes all matter that relates or refers in whole or in part to the subjects of these Requests for Production of Documents. If the document has been prepared in several copies, or additional copies have been made, and the copies are not identical (or by reason of subsequent modification of a copy by the addition of notations, or other modifications, are no longer identical) each non identical copy is a separate "document." The term "document" includes, without limitation, correspondence, personal and interoffice memoranda, notes, diaries, statistics, letters, telexes, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations or memoranda or any sort of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, recordings, worksheets, work papers, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing.

2. When "you" or "your" is used in these Interrogatories, it explicitly means the whole, any subparts, or divisions, that have knowledge of the relevant information, and if you have knowledge of their information, then any subsidiaries, as well.

Respectfully submitted,

The Law Offices Of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701
Ph. #: (409) 838-6410
Fax #: (409) 838-6084

By: _____



Herschel L. Hobson
TBA# 09744600

ATTORNEY FOR PLAINTIFFS

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing instrument has been duly forwarded to all counsel of record on this 28th day of May 1998.



Herschel L. Hobson

DEPOSITION ON WRITTEN QUESTIONS
TO COLORADO SCHOOL OF MINES RESEARCH INSTITUTE

1. Please state your name, address and job title.

ANSWER: _____

2. Please state if you ever visited and/ or analyzed talc from the Val Chisone Mine in Italy and/or the Hammondsville Mine in Vermont, U.S.A. for Johnson & Johnson.

ANSWER: _____

3. If you answered "yes" to Question No. 2, please provide the complete legal name, last known address and phone number of the person who performed the analysis.

ANSWER: _____

4. If you answered "yes" to Question No. 2, please state if you found the presence or absence of asbestiform minerals.

ANSWER: _____

5. Please produce any and all documents responsive to Question Nos. 2-4.

ANSWER: _____

6. Please state if you ever analyzed Johnson & Johnson's Baby Powder or its components?

ANSWER: _____

7. If you answered "yes" to Question No. 6, what were your findings regarding the fibrous and asbestiform material content?

ANSWER: _____

8. If you answered "yes" to Question No. 6, please provide the complete legal name, last known address and phone number of the person who performed the analysis.

ANSWER: _____

9. Please produce any and all documents responsive to Question Nos. 6-8.

ANSWER: _____

10. Please state if you ever surveyed the Val Chisone, Italy and/or Hammondsville, Vermont mine for the geological structure prior to or during mining.

ANSWER: _____

11. If you answered "yes" to Question No. 10, please provide the complete legal name, last known address and phone number of the person who surveyed the mines.

ANSWER: _____

12. Please produce any and all documents responsive to Question Nos. 10 & 11.

ANSWER: _____

13. Please produce any and all documents in your possession pertaining to Johnson & Johnson baby powder or talc products.

ANSWER: _____

CAUSE NO. D-157,746

DARLENE COKER, and spouse, § IN THE DISTRICT COURT OF
ROY COKER §
vs. § JEFFERSON COUNTY, TEXAS
BILL THAMES PHARMACY, INC., ET AL § 136TH JUDICIAL DISTRICT

DEPOSITION ON WRITTEN QUESTIONS

TO: Custodian of records for E.S. LABORATORIES, 1270 Roddy Road, Campobello, SC
29322.

You will please take notice that on June 15, 1998, a deposition by written questions will be taken of E.S. LABORATORIES, 1270 Roddy Road, Campobello, SC 29322, before a Notary Public or person authorized to administer oaths in the State of South Carolina on behalf of Nell McCallum & Associates, and/or officers and/or agents, 2615 Calder, Suite 111, Beaumont, TX 77702, for the taking of this deposition.

The deposition with attached questions and any cross-questions timely served may be used as evidence in the trial of the above-styled and numbered cause pending in the above-named Court.

Notice is further given that request is hereby made as authorized under Rules 188 and 208 of the Texas Rules of Civil Procedure to issue a subpoena and have it served on the witness directing him to produce all documents in his possession pertaining to the attached written questions.

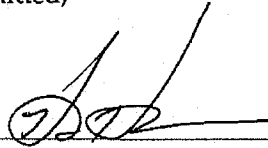
DEFINITIONS

1. The term "**document**" means all writings of any kind, including written, recorded, including electronic and magnetic recordings, or graphic matter, however produced or reproduced. It includes all matter that relates or refers in whole or in part to the subjects of these Requests for Production of Documents. If the document has been prepared in several copies, or additional copies have been made, and the copies are not identical (or by reason of subsequent modification of a copy by the addition of notations, or other modifications, are no longer identical) each non identical copy is a separate "document." The term "document" includes, without limitation, correspondence, personal and interoffice memoranda, notes, diaries, statistics, letters, telexes, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations or memoranda or any sort of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, recordings, worksheets, work papers, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing.
2. When "**you**" or "**your**" is used in these Interrogatories, it explicitly means the whole, any subparts, or divisions, that have knowledge of the relevant information, and if you have knowledge of their information, then any subsidiaries, as well.

Respectfully submitted,

The Law Offices Of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701
Ph. #: (409) 838-6410
Fax #: (409) 838-6084

By: _____

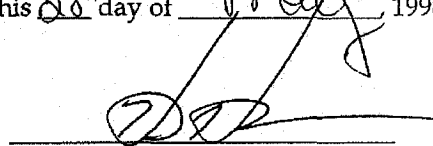


Herschel L. Hobson
TBA# 09744600

ATTORNEY FOR PLAINTIFFS

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing instrument
has been duly forwarded to all counsel of record on this 28th day of May, 1998.



Herschel L. Hobson

DEPOSITION ON WRITTEN QUESTIONS
TO E.S. LABORATORIES

1. Please state your name, address and job title.

ANSWER: _____

2. Please state if you ever visited and/ or analyzed talc from the Val Chisone Mine in Italy and/or the Hammondsville Mine in Vermont, U.S.A. for Johnson & Johnson.

ANSWER: _____

3. If you answered "yes" to Question No. 2, please provide the complete legal name, last known address and phone number of the person who performed the analysis.

ANSWER: _____

4. If you answered "yes" to Question No. 2, please state if you found the presence or absence of asbestiform minerals.

ANSWER: _____

5. Please produce any and all documents responsive to Question Nos. 2-4.

ANSWER: _____

6. Please state if you ever analyzed Johnson & Johnson's Baby Powder or its components?

ANSWER: _____

7. If you answered "yes" to Question No. 6, what were your findings regarding the fibrous and asbestiform material content?

ANSWER: _____

8. If you answered "yes" to Question No. 6, please provide the complete legal name, last known address and phone number of the person who performed the analysis.

ANSWER: _____

9. Please produce any and all documents responsive to Question Nos. 6-8.

ANSWER: _____

10. Please state if you ever surveyed the Val Chisone, Italy and/or Hammondsville, Vermont mine for the geological structure prior to or during mining.

ANSWER: _____

11. If you answered "yes" to Question No. 10, please provide the complete legal name, last known address and phone number of the person who surveyed the mines.

ANSWER: _____

12. Please produce any and all documents responsive to Question Nos. 10 & 11.

ANSWER: _____

13. Please produce any and all documents in your possession pertaining to Johnson & Johnson baby powder or talc products.

ANSWER: _____

CAUSE NO. D-157,746

DARLENE COKER, and spouse, § IN THE DISTRICT COURT OF
ROY COKER §
§
vs. § JEFFERSON COUNTY, TEXAS
§
BILL THAMES PHARMACY, INC., ET AL § 136TH JUDICIAL DISTRICT

DEPOSITION ON WRITTEN QUESTIONS

TO: Custodian of records for McCrone Associates, 850 Pasquinelli Drive, West Mont,
Illinois 60559.

You will please take notice that on June 15, 1998, a deposition by written questions will be taken of McCrone Associates custodian of record, 850 Pasquinelli Drive, West Mont, Illinois 60559, before a Notary Public or person authorized to administer oaths in the State of Illinois on behalf of Nell McCallum & Associates, and/or officers and/or agents, 2615 Calder, Suite 111, Beaumont, TX 77702, for the taking of this deposition.

The deposition with attached questions and any cross-questions timely served may be used as evidence in the trial of the above-styled and numbered cause pending in the above-named Court.

Notice is further given that request is hereby made as authorized under Rules 188 and 208 of the Texas Rules of Civil Procedure to issue a subpoena and have it served on the witness directing him to produce all documents in his possession pertaining to the attached written questions.

DEFINITIONS

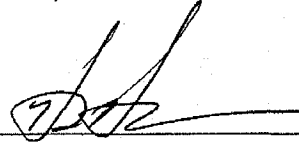
1. The term "**document**" means all writings of any kind, including written, recorded, including electronic and magnetic recordings, or graphic matter, however produced or reproduced. It includes all matter that relates or refers in whole or in part to the subjects of these Requests for Production of Documents. If the document has been prepared in several copies, or additional copies have been made, and the copies are not identical (or by reason of subsequent modification of a copy by the addition of notations, or other modifications, are no longer identical) each non identical copy is a separate "document." The term "document" includes, without limitation, correspondence, personal and interoffice memoranda, notes, diaries, statistics, letters, telexes, telegrams, minutes, contracts, reports, studies, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations or memoranda or any sort of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, recordings, worksheets, work papers, and all drafts, alterations, modifications, changes, and amendments of any of the foregoing.

2. When "you" or "your" is used in these Interrogatories, it explicitly means the whole, any subparts, or divisions, that have knowledge of the relevant information, and if you have knowledge of their information, then any subsidiaries, as well.

Respectfully submitted,

The Law Offices Of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701
Ph. #: (409) 838-6410
Fax #: (409) 838-6084

By: _____

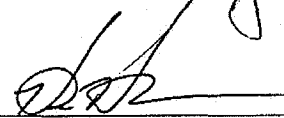


Herschel L. Hobson
TBA# 09744600

ATTORNEY FOR PLAINTIFFS

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing instrument has been duly forwarded to all counsel of record on this 28th day of May, 1998.



Herschel L. Hobson

DEPOSITION ON WRITTEN QUESTIONS
TO MCCRONE ASSOCIATES

1. Please state your name, address and job title.

ANSWER: _____

2. Please state if you ever visited and/ or analyzed talc from the Val Chisone Mine in Italy and/or the Hammondsville Mine in Vermont, U.S.A. for Johnson & Johnson.

ANSWER: _____

3. If you answered "yes" to Question No. 2, please provide the complete legal name, last known address and phone number of the person who performed the analysis.

ANSWER: _____

4. If you answered "yes" to Question No. 2, please state if you found the presence or absence of asbestiform minerals.

ANSWER: _____

5. Please produce any and all documents responsive to Question Nos. 2-4.

ANSWER: _____

6. Please state if you ever analyzed Johnson & Johnson's Baby Powder or its components?

ANSWER: _____

7. If you answered "yes" to Question No. 6, what were your findings regarding the fibrous and asbestiform material content?

ANSWER: _____

8. If you answered "yes" to Question No. 6, please provide the complete legal name, last known address and phone number of the person who performed the analysis.

ANSWER: _____

9. Please produce any and all documents responsive to Question Nos. 6-8.

ANSWER: _____

10. Please state if you ever surveyed the Val Chisone, Italy and/or Hammondsville, Vermont mine for the geological structure prior to or during mining.

ANSWER: _____

11. If you answered "yes" to Question No. 10, please provide the complete legal name, last known address and phone number of the person who surveyed the mines.

ANSWER: _____

12. Please produce any and all documents responsive to Question Nos. 10 & 11.

ANSWER: _____

13. Please produce any and all documents in your possession pertaining to Johnson & Johnson baby powder or talc products.

ANSWER: _____

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

FILED
DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

SV

'98 JUN -2 P4:46

June 2, 1998

Via Hand-Delivery

JOHN S. APPLEMAN
DISTRICT CLERK

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

In accordance with the Emergency Rule for Filing Discovery and Materials in the District
Courts of Jefferson County, Texas and Texas Civil Practices and Remedies Code, §18.001, the
following is being served on all counsel:

- Affidavit of Michael Sanders, custodian of records for Diagnostic Center Hospital,
(along with 7 pages of billing records pertaining to Darlene Coker)

Thank you for your assistance in this matter.

Very truly yours,

Darla Budd

Darla Budd
Secretary to Herschel Hobson

/db

cc: Mr. Roger Worthington Via facsimile
Mr. Gene Williams Via facsimile

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

98 JUN -9 P2:32

June 8, 1998

Via Hand-Delivery

JOHN S. APPLEMAN
DISTRICT CLERK

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

In accordance with the Emergency Rule for Filing Discovery and Materials in the District
Courts of Jefferson County, Texas and Texas Civil Practices and Remedies Code, §18.001, the
following is being served on all counsel:

- Affidavit of Aaron McBride, custodian of records for Market Basket #28 Pharmacy,
(along with 3 pages of pharmacy records)

Thank you for your assistance in this matter.

Very truly yours,

Darla Budd

Darla Budd
Secretary to Herschel Hobson

/db

Enclosure

cc: Mr. Roger Worthington
Mr. Gene Williams

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

CB

June 11, 1998

Via Hand-Delivery

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

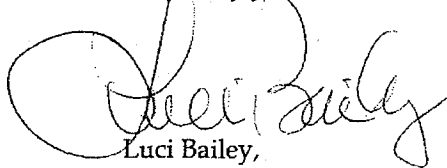
RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

In accordance with the Emergency Rule for Filing Discovery and Materials in the District
Courts of Jefferson County, Texas, this letter serves as notice that by copy of this letter, I am
serving all counsel of record with Plaintiffs' 6/11/98 Cross-Notice of Video Deposition of
Dr. Vern Mills.

Thank you for your attention in this regard.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/db

Enclosure

cc: Mr. Roger Worthington
Mr. Gene Williams
Warriene Platt/Legal Images

JOHN S. APPLEMAN
DISTRICT CLERK

98 JUN 12 P4:27

FILED
DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

CAUSE NO. D-157,746

DARLENE COKER, and spouse, § IN THE DISTRICT COURT OF
ROY COKER §
§
vs. § JEFFERSON COUNTY, TEXAS
§
BILL THAMES PHARMACY, INC., ET AL § 136TH JUDICIAL DISTRICT

PLAINTIFFS' 6/11/98 CROSS-NOTICE OF VIDEO DEPOSITION
OF DR. VERN MILLS

TO: Defendant, JOHNSON & JOHNSON CONSUMER COMPANY, INC., by and
through its attorney of record: Mr. Gene Williams, Mehaffy & Weber, PO Box 16,
Beaumont, TX 77704.

PLEASE TAKE NOTICE that the Plaintiffs in the above-referenced cause of action
will take the video deposition of the person named below at the time and place designated
in this notice pursuant to the Texas Rules of Civil Procedure.

WITNESS: Dr. Vern Mills

DATE: June 23, 1998, continuing from day to day until completed

TIME: 1:00 p.m.

PLACE: Diagnostic Clinic of Houston
6448 Fannin, 9th Floor (ask for Donna)
Houston, TX

VIDEOGRAPHER: Warriene Flatt
Legal Images
PO Box 315
Gilchrist, TX 77617

JOHN S. APPELMAN
DISTRICT CLERK

FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS
98 JUN 12 P 4:27

You are invited to appear and cross-examine the witness.

Respectfully submitted,

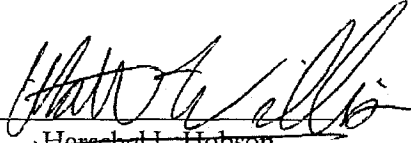
The Law Offices Of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701
Ph. #: (409) 838-6410
Fax #: (409) 838-6084

By: Herschel L. Hobson / mru
Herschel L. Hobson
TBA# 09744600

ATTORNEY FOR PLAINTIFFS

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing instrument has been duly forwarded to all counsel of record, via facsimile, on this 11th day of June, 1998.


Herschel L. Hobson
MATTHEW R. WILLIS

JOHN S. APPLEMAN
DISTRICT CLERK

98 JUN 12 P4:27

FILED
DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

September 23, 1997

Via Hand-Delivery

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

D157746

RE: CAUSE NO. _____; DARLENE COKER, and spouse, ROY COKER
v. BILL THAMES PHARMACY INC., ET AL; OUR FILE NO. 2869-0

Dear Mr. Appleman:

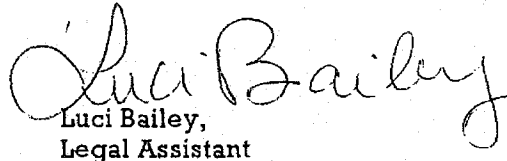
Enclosed for filing in the above-referenced case, please find the following:

- 1) Plaintiffs' Original Petition, original and 10 copies
- 2) Jury Demand
- 3) Motion for Appointment of Process Server, and proposed Order
- 4) Check in the amount of \$235.00, for filing fees and citations

Please contact me once the citations are completed so that we may pick them up.

Thank you for your attention in this regard.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/dm

Enclosures

JOHN S. APPLEMAN
DISTRICT CLERK

SEP 23 AM 1:38

FILED
DISTRICT COURT
JEFFERSON COUNTY TEXAS

CAUSE NO. _____

DARLENE COKER, and spouse
ROY COKER

vs.

BILL THAMES PHARMACY INC.,
CORRIGAN ENTERPRISES, INC.

f/k/a Johnson-Johnson Baby
f/k/a S.W.S. Pharmacy Inc.

FERTITTAS FINER FOODS, INC.
GIANT FOOD DISCOUNT CITY, INC.
HENKE & PILLOT, INC. HSTN.

INC. f/k/a J&J Baby Products
JOHNSON & JOHNSON PROFESSIONAL
LOVOI AND SONS PHARMACIES, INC.
MCNEIL PPC INC.

Products
THE KROGER COMPANY

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

DISTRICT COURT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW DARLENE COKER and spouse, ROY COKER, complaining of the following defendants, each of which did business in Texas at all relevant times and whose registered agents or statutory agent for service under the Long Arm Statute is indicated:

- a. ✓ Bill Thames Pharmacy Inc., f/k/a S.W.S. Pharmacy Inc., a Texas corporation, to be served Joseph Seale, 3655 Calder, Beaumont, Texas.
- b. ✓ Corrigan Enterprises, Incorporated, f/k/a The Summers Drug Store Company, a Maryland corporation, to be served via Walter N. Corrigan, 3130 E. Houston Street, San Antonio, TX.
- c. ✓ Fertittas Finer Foods, Inc., a Texas corporation, to be served via Jerome Fertitta, 1155 S. 11th Street, Beaumont, TX 77701.
- d. ✓ Giant Food Discount City, Inc., a Texas corporation, to be served via Henry C. Robson, Jr., 6002 Osburn Street, Houston, TX 77037.
- e. ✓ Henke & Pillof, Inc.-Houston, a Texas corporation, to be served via C.T. Corporation Systems, 811 Dallas Avenue, Houston, TX.
- f. ✓ Johnson & Johnson Professional Inc., f/k/a J&J Baby Products, a New Jersey corporation, to be served via registered agent: C.T. Corporation System, 1601 Elm Street, Dallas, TX 75201; and their home office: Johnson & Johnson, 1 Johnson & Johnson Plaza, New Brunswick, NJ 08933, via the Secretary of State.
- g. ✓ Lovoi and Sons Pharmacies, Inc., a Texas corporation, to be served via John J. Lovoi, 3480 Fannin Avenue, Beaumont, TX 77701.
- h. ✓ McNeil PCC Inc. f/k/a Johnson-Johnson Baby Products, a New Jersey corporation, to be served via C.T. Corporation System, 350 North St. Paul Street, Dallas, TX 75201.
- i. ✓ The Kroger Co., an Ohio corporation, to be served via C.T. Corporation System, 811 Dallas Avenue, Houston, TX.

1. Jurisdiction is proper in this Court, the claim being in excess of the minimum jurisdictional limits of the Court.

2. Venue is proper because a significant and substantial amount of the bad acts complained of occurred in Jefferson County.

3. Plaintiffs sue for the personal injury of Darlene Coker inflicted by the negligent, gross negligent, fraud, deceit, misrepresentations and defective products of the defendants.

4. Defendants negligently and intentionally caused Darlene Coker to be fatally exposed to talc, proximately causing her to contract peritoneal mesothelioma.

5. Defendants made, sold, or specified, talc products which were defective and unreasonably dangerous as designed, manufactured and marketed. These products, used as intended and foreseen, necessarily released poisonous talc, which was a producing cause of the mesothelioma.

6. Defendants had an actual, subjective awareness of the capacity of airborne talc components in susceptible individuals, and defendants knew they could not with confidence predict precisely who would become sickened, yet they intentionally failed to protect, warn, instruct or otherwise prevent the inevitable exposures and totally preventable disease, which conduct evidenced such an entire want of care as to be grossly negligent and battery.

7. Plaintiffs sue for their past and future injuries for which conduct of defendants has legal cause:

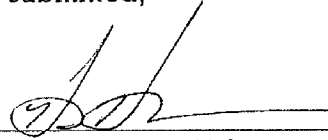
- a. pain, suffering, mental anguish and grief;
- b. physical impairment;
- c. loss of earnings and earning capacity and financial support;
- d. loss of inheritance;
- e. loss of society;
- f. hedonic damages for lifetime lost;
- g. exemplary damages;
- h. all other relief the law allows, plus prejudgment interest from the first date of injurious exposure, post judgment interest and costs.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs DARLENE AND ROY COKER demand judgment against the defendants, and each of them, jointly and severally, for general damages, special damages, for punitive and exemplary damages, for their costs expended herein, for prejudgment interest from the date of the injury, and postjudgment on the judgment at the rate allowed by law, and for such other and further relief, both at law and in equity, to which Plaintiffs may show themselves justly entitled.

Respectfully submitted,

The Law Offices Of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701
Ph. #: (409) 838-6410
Fax #: (409) 838-6084

By: _____



Herschel L. Hobson
TBA# 09744600

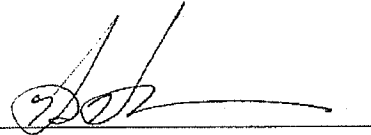
Joseph C. Blanks, P.C.
PO Box 3172
Beaumont, Texas 77704
Ph. #: (409) 838-6410
Fax #: (409) 838-6084

ATTORNEYS FOR PLAINTIFFS

JURY DEMAND

Plaintiff respectfully requests a trial by jury.

By: _____



Herschel L. Hobson

CAUSE NO. _____

D157746

DARLENE COKER, and spouse
ROY COKER

vs.

BILL THAMES PHARMACY INC.,
CORRIGAN ENTERPRISES, INC.
f/k/a Johnson-Johnson Baby
f/k/a S.W.S. Pharmacy Inc.
FERTITTAS FINER FOODS, INC.
GIANT FOOD DISCOUNT CITY, INC.
HENKE & PILOT, INC. HSTN.
INC. f/k/a J&J Baby Products
JOHNSON & JOHNSON PROFESSIONAL
LOVOI AND SONS PHARMACIES, INC.
MCNEIL PPC INC.
Products
THE KROGER COMPANY

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

DISTRICT COURT

MOTION FOR APPOINTMENT FOR PROCESS SERVER

COMES NOW Plaintiff and move this Court pursuant to Rules 10S,105,106(a), 107 and 108 of the Texas Rules of Civil Procedure to appoint KATHY VIATOR as a designated agent by registered mail to serve process in this action, and that said individual is designated shall have full power and authority to execute such process and make due return as provided by Rule 107, T.R.C.P.

For grounds, Plaintiff would ask this Honorable Court to execute service on the above styled cause because of the work overload of the Sheriff's Department, that the peculiarities of toxic litigation which involve numerous defendants many of whom are absent from or non-residents of the State and the necessity of an efficient and expeditious manner of process service.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray this Court enter its Order and designate KATHY VIATOR as agent to execute process by registered mail with return being made in accordance with Rule 107, T.R.C.P.

Respectfully submitted,

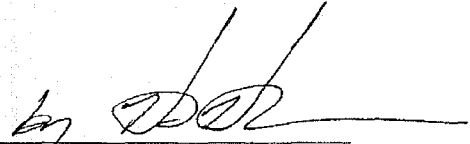
The Law Offices Of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701
Ph. #: (409) 838-6410
Fax #: (409) 838-6084

By: _____



Herschel L. Hobson
TBA# 09744600

By: _____



Joseph C. Blanks
TBA# 02456770

ATTORNEYS FOR PLAINTIFFS

0157746

CAUSE NO.

DARLENE COKER, and spouse
ROY COKER

vs.

BILL THAMES PHARMACY INC.,
CORRIGAN ENTERPRISES, INC.
 f/k/a Johnson-Johnson Baby
 f/k/a S.W.S. Pharmacy Inc.
FERTITTAS FINER FOODS, INC.
GIANT FOOD DISCOUNT CITY, INC.
HENKE & PILLOT, INC. HSTN.
 INC. f/k/a J&J Baby Products
JOHNSON & JOHNSON PROFESSIONAL
LOVOI AND SONS PHARMACIES, INC.
MCNEIL PPC INC.
 Products
THE KROGER COMPANY

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

DISTRICT COURT

ORDER

CAME ON THIS DAY for consideration the Plaintiff's Motion for the authorization of KATHY VIATOR to be lawfully and duly authorized to execute all process in connection with the above captioned cause, and the Court having considered the Motion is of the opinion it is meritorious and should be granted.

IT IS, THEREFORE,

ORDERED, ADJUDGED and DECREED that KATHY VIATOR be authorized and empowered as an officer of this Court to execute process by registered mail and make due return thereof.

It is further ORDERED that a certified copy of this Order shall be attached to any and all such process.

SIGNED this the _____ day of _____, 1997.

JUDGE PRESIDING

FOWLER, WILES & KEITH, L.L.P.

ATTORNEYS AND COUNSELORS AT LAW

1900 CITYPLACE CENTER
2711 NORTH HASKELL AVENUE
DALLAS, TEXAS 75204-2944

TELEPHONE: 214-841-3000
FACSIMILE: 214-841-3099

C. EDWARD FOWLER, JR.
WILLIAM DIXON WILES
KEVIN J. KEITH*
BARBARA PILO
JOHN R. OWEN
HUNTER THOMAS HILLIN

* BOARD CERTIFIED - CIVIL APPELLATE LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

C. R. ALLEN, JR. M.D., J.D.
JULIE A. BEDINGHAUS
DAVID L. BENFORD
C. CHRISTIAN FREDERIKSEN, JR.
JEFFREY W. HIGHTOWER, JR.
ROBERT L. MANTEUFFEL
LENORE S. McKENNA, R.N., J.D.
JOHN B. SHIPP

OF COUNSEL
VICKY TROMPLER, M.D., J.D.

October 17, 1997

U.S. EXPRESS MAIL TB 162001697 US

Mr. John S. Appleman
District Clerk
Jefferson County Courthouse
P.O. Box 3707
Beaumont, TX 77704

Re: No. D-0157746; Coker v. Bill Thames
Pharmacy, et al

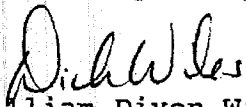
Dear Mr. Appleman:

Please find enclosed Defendant's Original Answer and Defendant's Jury Demand, which I request that you file among the other papers in this cause. Also enclosed is my firm check in payment of a jury fee.

By copy of this letter I am forwarding copies of the foregoing pleadings to plaintiffs' counsel.

Please return to me a file-stamped copy of this letter in the self-addressed envelope provided. Thank you.

Yours very truly,


William Dixon Wiles

WDW/ak
Enc.

cc: Mr. Herschel L. Hobson
Attorney at Law
2190 Harrison
Beaumont, TX 77701

JOHN S. APPLEMAN
DISTRICT CLERK

97 OCT 20 08:32

FILED
OCT 20 1997
CLERK OF DISTRICT COURT

CAUSE NO. D-0157746

DARLENE COKER AND
SPOUSE, ROY COKER

VS.

BILL THAMES PHARMACY, INC.;
CORRIGAN ENTERPRISES, INC.
f/k/a Johnson-Johnson Baby
f/k/a S.W.S. Pharmacy, Inc.;
FERTITTAS FINER FOODS, INC.;
GIANT FOOD DISCOUNT CITY,
INC., HENKE & PILLOT, INC.
HSTN., INC. f/k/a J&J Baby
Products; JOHNSON & JOHNSON
PROFESSIONAL; LOVOI AND
SONS PHARMACIES, INC.;
McNEIL PPC, INC. Products;
THE KROGER COMPANY

§ IN THE DISTRICT COURT OF

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DIST. CLERK
JEFFERSON COUNTY, TEXAS

'97 OCT 20 A8:32

JEFFERSON COUNTY, TEXAS

JOHN S. APPLIN
DISTRICT CLERK

136TH JUDICIAL DISTRICT

DEFENDANT'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now the entity sued under the name McNEIL PPC, INC. f/k/a Johnson-Johnson Baby Products, one of the defendants in the above entitled and numbered cause, and in response to Plaintiffs' Original Petition, makes and files this, its Original Answer, and as grounds therefor would respectfully show the Court the following:

1.

This defendant objects and specially excepts to paragraph 3 of Plaintiffs' Original Petition wherein plaintiffs allege the following:

"Plaintiffs sue for the personal injury of Darlene Coker inflicted by the negligent, gross negligent, fraud, deceit, misrepresentations and defective products of the defendants."

This defendant would show that the allegations of negligence, gross negligence, fraud, deceit, misrepresentations and defective products are all vague, general and indefinite, and plaintiffs have failed to allege any act or omission complained of that would give rise to a claim for negligence, or gross negligence, or any act that would constitute fraud, deceit or any alleged misrepresentation or the particular type of defect being complained of, and therefore this defendant does not have fair notice of the allegations being asserted against him and cannot properly prepare its defenses. Defendant moves the Court to strike the allegation from plaintiffs' pleading and of this exception, prays judgment of the Court.

2.

This defendant objects and specially excepts to paragraph 4 of Plaintiffs' Original Petition wherein plaintiffs allege the following:

"Defendants negligently and intentionally caused Darlene Coker to be fatally exposed to talc, proximately causing her to contract peritoneal mesothelioma."

This defendant would show that the allegation that this defendant "negligently and intentionally caused Darlene Coker to be fatally exposed to talc," is vague, general and indefinite, and plaintiffs have failed to specify any act or omission complained of that would give rise to a claim of negligence, or to specify in any manner how this defendant is alleged to have "intentionally" caused plaintiff to be fatally exposed to talc, and therefore this defendant does

not have fair notice of the allegations being asserted against it and cannot properly prepare its defenses. Defendant moves the Court to strike the allegation from plaintiffs' pleading and of this exception, prays judgment of the Court.

3.

This defendant objects and specially excepts to paragraph 5 of Plaintiffs' Original Petition wherein plaintiffs allege the following:

"Defendants made, sold, or specified, talc products which were defective and unreasonably dangerous as designed, manufactured and marketed. These products, used as intended and foreseen, necessarily released poisonous talc, which was a producing cause of the mesothelioma."

This defendant would show that plaintiffs have failed to specify which product it allegedly made, sold, or specified ... designed, manufactured [or] marketed" which was allegedly defective and unreasonably dangerous, and therefore this defendant does not have fair notice of the allegations being asserted against it and cannot properly prepare its defenses. Defendant moves the Court to strike the allegation from plaintiffs' pleading and of this exception, prays judgment of the Court.

4.

This defendant objects and specially excepts to paragraph 6 of Plaintiffs' Original Petition wherein the plaintiffs allege the following:

"Defendants had an actual, subjective awareness of the capacity of airborne talc components in susceptible individuals, and defendants knew they could not with confidence predict precisely who would become sickened,

yet they intentionally failed to protect, warn, instruct or otherwise prevent the inevitable exposures and totally preventable disease, which conduct evidenced such an entire want of care as to be grossly negligent and battery."

Defendant objects to paragraph 6 for the reason that plaintiffs have failed to specify which product this defendant allegedly "made, sold, or specified, ... designed, manufactured [or] marketed" which allegedly had the capacity to "sicken" susceptible individuals, and of which defendant was subjectively aware, or which product defendant allegedly manufactured from which defendant "intentionally failed to protect, warn, instruct or otherwise prevent the inevitable exposures and totally preventable disease," and therefore defendant does not have fair notice of the allegations being asserted against it and cannot properly prepare its defenses. Defendant moves the Court to strike the allegation from plaintiffs' pleading and of this exception, prays judgment of the Court.

5.

This defendant objects and specially excepts to that portion of paragraph 6 wherein plaintiffs allege "battery," for the reason that the allegation is vague, general and indefinite and plaintiffs have failed to specify any acts which would constitute legal battery, and therefore defendant does not have fair notice of the allegations being asserted against it and cannot properly prepare its defenses. Defendant moves the Court to strike the allegation

from plaintiffs' pleading and of this exception, prays judgment of the Court.

6.

This defendant objects and specially excepts to that portion of paragraph 7-d wherein plaintiffs allege damages for "loss of inheritance," for the reason that inheritance damages are not recoverable absent a wrongful death claim, which has not been asserted in this cause of action. Plaintiffs are therefore attempting to place a greater burden on this defendant than is allowed or permitted by law. Defendant moves the Court to strike the allegation from plaintiffs' pleading and of this exception, prays judgment of the Court.

7.

This defendant objects and specially excepts to paragraph 7-f of Plaintiffs' Original Petition wherein plaintiffs allege "hedonic damages for lifetime lost," for the reason that there is no such compensable item of damages permitted by common law or statute in the state of Texas, and plaintiffs are therefore attempting to place a greater burden on this defendant than is allowed or permitted by law. Defendant moves the Court to strike the allegation from plaintiffs' pleading and of this exception, prays judgment of the Court.

8.

This defendant objects and specially excepts to that portion of paragraph 7-h wherein plaintiffs seek damages for "prejudgment

interest from the first date of injurious exposure," for the reason that there is no statutory or common law basis for recovery of prejudgment interest from "the date of injurious exposure," the same being specified, if at all, by statute. Plaintiffs are attempting to place a greater burden on this defendant than is allowed or permitted by law and defendant moves the Court to strike the allegation from plaintiffs' pleading and of this exception, prays judgment of the Court.

9.

This defendant objects and specially excepts to that portion of paragraph 1 wherein plaintiffs claim damages "in excess of the minimum jurisdictional limits of the Court," for the reason that the allegation is vague, general and indefinite and open-ended, and plaintiffs have failed to specify the total amount of damages sought from this defendant and therefore defendant does not have fair notice of all of the allegations being asserted against it and cannot properly prepare its defenses. Defendant moves the Court to require plaintiffs to amend and allege a total amount of damages being claimed in this lawsuit and of this exception, prays judgment of the Court.

10.

This defendant denies that he is liable to plaintiff for any amount of money whatsoever, and says that in any event, the damages which plaintiff could seek herein are limited by law pursuant to §11.01-11.04 of Art. 4590i, TEX. REV. CIV. STAT. ANN.

11.

This defendant would show that plaintiffs' cause of action is barred by the statute of limitations.

TO THE COURT ONLY

12.

Defendant denies that it is liable to plaintiffs for any amount of damages or money whatsoever, but states that inasmuch as plaintiffs have alleged exemplary and punitive damages, defendant hereby invokes all of the provisions of Chapter 41, TEX. CIV. PRAC. & REM. CODE, including but not limited to §§41.007 and 41.008.

13.

With respect to the allegations asserted by plaintiffs against this defendant and others, defendant hereby invokes all of the rights, remedies, elections and provisions of Chapters 32 and 33 of the TEX. CIV. PRAC. & REM. CODE, including but not limited to §§33.013 - 33.017.

WHEREFORE, PREMISES CONSIDERED, defendant prays that its special exceptions be sustained, and that upon final trial and hearing hereof plaintiffs take nothing from it, but that it go hence without day and recover its costs in this behalf expended, and for such other and further relief, both at law and in equity, to which defendant may show itself to be justly entitled.

Respectfully submitted,

FOWLER, WILES & KEITH, L.L.P.

By: William Dixon Wiles
William Dixon Wiles
State Bar No. 21467800

1900 Cityplace Center
2711 North Haskell
Dallas, Texas 75204-2944
(214) 841-3000 - Telephone
(214) 841-3099 - Telecopier

Attorney for Defendant
McNeil PCC, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing answer was forwarded to plaintiffs' counsel this 17th day of October, 1997.

William Dixon Wiles
William Dixon Wiles

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CAUSE NO. D-0157746

DARLENE COKER AND	§	IN THE DISTRICT COURT OF
SPOUSE, ROY COKER	§	
	§	
VS.	§	
	§	
BILL THAMES PHARMACY, INC.;	§	
CORRIGAN ENTERPRISES, INC.	§	
f/k/a Johnson-Johnson Baby	§	
f/k/a S.W.S. Pharmacy, Inc.;	§	JEFFERSON COUNTY, TEXAS
FERTITTAS FINER FOODS, INC.;	§	
GIANT FOOD DISCOUNT CITY,	§	
INC., HENKE & PILLOT, INC.	§	
HSTN., INC. f/k/a J&J Baby	§	
Products; JOHNSON & JOHNSON	§	
PROFESSIONAL; LOVOI AND	§	
SONS PHARMACIES, INC.;	§	
McNEIL PPC, INC. Products;	§	
THE KROGER COMPANY	§	136TH JUDICIAL DISTRICT

DEFENDANT'S JURY DEMAND

Pursuant to Rule 216 of the Texas Rules of Civil Procedure, the entity sued under the name McNeil PPC, Inc. respectfully requests a trial by jury regarding the above styled and numbered cause.

FOWLER, WILES & KEITH, L.L.P.

By:

William Dixon Wiles

William Dixon Wiles
State Bar No. 21467800

1900 Cityplace Center
2711 North Haskell
Dallas, Texas 75204-2944
(214) 841-3000 - Telephone
(214) 841-3099 - Telecopier

Attorney for Defendant
McNeil PPC, Inc.

CERTIFICATE OF SERVICE

This is to certify that a copy of the above Jury Demand was forwarded to plaintiffs' counsel this 17th day of October, 1997.

William Dixon Wiles

William Dixon Wiles

CAUSE NO. D-157,746

DARLENE COKER, ET AL

VS.

BILL THAMES PHARMACY, INC.,
CORRIGAN ENTERPRISES, INC.
f/k/a JOHNSON-JOHNSON BABY f/k/a
S.W.S. PHARMACY INC., FERTITTAS
FINER FOODS, INC., GIANT FOOD
DISCOUNT CITY, INC., HENKE &
PILLOT, INC., HSTN. INC. f/k/a
J&J BABY PRODUCTS, JOHNSON &
JOHNSON PROFESSIONAL, LOVOI
AND SONS PHARMACIES, INC.,
MCNEIL PPC INC. PRODUCTS, THE
KROGER COMPANY

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

136TH JUDICIAL DISTRICT

**DEFENDANTS' OBJECTIONS AND ANSWERS TO INTERROGATORIES AND
OBJECTIONS AND RESPONSES TO REQUEST FOR PRODUCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Johnson & Johnson Consumer Companies, Inc., Defendant in the above-styled
and numbered cause, and files this its Objections and Answers to Interrogatories and Objections and
Responses to Request for Production propounded to Defendant Johnson & Johnson Consumers
Company, Inc.

MW/80804

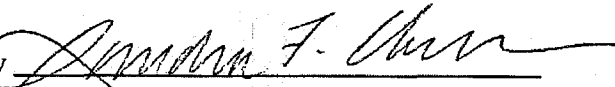
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FILED
DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

Respectfully submitted,

MEHAFFY & WEBER

Attorneys for Johnson & Johnson
Professional, Inc. and McNeil PPC, Inc. f/k/a
Johnson-Johnson Baby Products

By 
Gene M. Williams, Of Counsel

State Bar No. 21535300

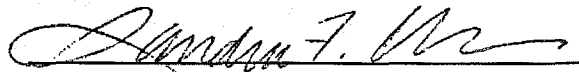
Sandra F. Clark

State Bar No. 04294520

Post Office Box 16
Beaumont, Texas 77704
Telephone: 409/835-5011
Telecopier: 409/835-5729

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been forwarded to all counsel of record on this the 6th day of May, 1998.


SANDRA F. CLARK

Preliminary Statement

Johnson & Johnson Consumer Companies, Inc. (hereinafter Johnson & Johnson) states that in the preparation of its responses to plaintiff's requests and interrogatories, it has made, and continues to make, a concerted good faith effort to collect all of the requested information or documents from Johnson & Johnson as well as any relevant predecessors and vendors. Defendant provides these preliminary responses with the understanding that information may change as discovery proceeds. Pursuant to agreement with plaintiff's counsel, defendant Johnson & Johnson provide these responses on behalf of Johnson & Johnson and reserves the right to make objections and to file responses for all other entities served by plaintiff's counsel in this lawsuit.

Johnson & Johnson will not produce any documents generated by its counsel directed to other counsel or to its officers, directors or employees regarding legal matters, and will not produce any documents generated by the officers, directors or employees regarding legal matters, and will not produce any documents generated by the officers, directors or employees of Johnson & Johnson to its counsel regarding legal matters. Johnson & Johnson will not produce any documents which are work-product drafted by attorneys employed by Johnson & Johnson. As for its responses to interrogatories, Johnson & Johnson state that when the requested information is readily available from documents, the documents will be produced as noted in individual interrogatory responses. When information or documents concerning incomplete research are requested, Johnson & Johnson state that they will produce published interim reports of such research. In response to requests for documents and interrogatories, Johnson & Johnson will produce information relevant to talc or baby powder.

Johnson & Johnson reserves the right to change its responses if it appears from additional research that omissions or errors have been made herein or that further or more accurate information should be provided. Furthermore, Johnson & Johnson has not completed preparation for trial. Because the responses contained herein are based only upon such information and documents which are presently available to or specifically known to Johnson & Johnson at the time the responses were prepared, the responses herein may be supplemented or changed upon continuing investigation.

This Preliminary Statement shall apply to each and every response given herein, and shall be incorporated by reference as though fully set forth in each of the responses appearing in the following pages.

OBJECTIONS AND ANSWERS TO INTERROGATORIES AND
OBJECTIONS AND RESPONSES TO REQUEST FOR PRODUCTION

Interrogatory No. 1

Please list the company name and location of each entity that packaged your baby powder from 1945 through 1975,

ANSWER: Baby powder was packaged at a variety of locations by Johnson & Johnson entities from 1945 through 1975. To the best of the company's knowledge, baby powder was not packaged by any non-Johnson & Johnson entity.

Request for Production No. 1

Please produce any and all documents responsive to Interrogatory No. 1.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Interrogatory No. 1 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Furthermore, defendant objects to the extent that plaintiff's request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 2

Did Johnson & Johnson ever sell baby powder under any name other than Johnson & Johnson between 1945 through 1975, and if so, what name and when?

ANSWER: No

Request for production No. 2

Please produce any and all documents responsive to Interrogatory No. 2.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Interrogatory No. 2 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Furthermore, defendant objects to the

extent that plaintiff's request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 3

Please list each location where your raw materials for Johnson & Johnson baby powder was mined from 1945 through 1975.

ANSWER: Based on defendants' current investigation and document review to date, from 1945 through 1975, talc was mined from the Val Chisone Mine in Italy, and the Hammondsville Mine in Vermont, U.S.A.

Request for Production No. 3

Please produce any and all documents responsive to Interrogatory No. 3.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Interrogatory No. 3 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Furthermore, defendant objects to the extent that plaintiff's request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 4

Please list all suppliers to Johnson & Johnson of raw or processed material used in Johnson & Johnson baby powder between 1945 and 1975.

ANSWER: Defendants object to this Interrogatory to the extent it calls for privileged or trade secret information. Subject to the foregoing objection, talc was supplied by Windsor Minerals (Hammondsville Mine, Vermont) and the Val Chisone Mine, Italy.

Request for Production No. 4

Please produce any and all documents responsive to Interrogatory No. 4.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Interrogatory No. 4 does not request documents. As such,

plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Furthermore, defendant objects to the extent that plaintiff's request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 5

Please list each claim made against you giving the style, court and date of filing, which involved an asbestos-related claim of injury and any talc product made or sold by you.

ANSWER: Defendant objects to this Interrogatory as beyond the scope of Rule 166(b)(2). The matters inquired of do not have a tendency to make any fact that is of consequence to this action more or less probable. Furthermore, Defendant objects to the extent Plaintiff's interrogatory seeks to evade the attorney/client, work product, party communication/investigatory and witness statement privileges. Subject to the foregoing objection, none.

Request for Production No. 5

Please produce any and all documents responsive to Interrogatory No. 5.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Interrogatory No. 5 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs' request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 6

Please list each epidemiological study any of your employees potentially occupationally exposed to talc made up all or part of the study cohort.

ANSWER: Defendant objects to this Interrogatory as beyond the scope of Rule 166(b)(2). The matters inquired of do not have a tendency to make any fact that is of consequence to this action more or less probable. Furthermore, Defendant objects to the extent Plaintiff's interrogatory seeks to evade the attorney/client, work product, party communication/investigatory and witness statement privileges. Subject to the foregoing objections, defendant's investigation is

ongoing . Defendant will supplement this interrogatory with non-objectionable information as it is discovered.

Request for Production No. 6

Please produce all documents responsive to Interrogatory No. 6.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce “all documents” responsive to Interrogatory No. 6. Interrogatory No. 6 does not request documents. As such, plaintiffs’ request is overbroad, vague, unintelligible, and constitutes a “fishing expedition” such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs’ request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 7

Please list each location where your baby powder was packaged from 1945 through 1975.

ANSWER: Object - Question is repetitious and duplicative of Interrogatory No. 1. Subject to the foregoing objection, see Answer to Interrogatory No. 1.

Request for Production No. 7

Please produce all documents responsive to Interrogatory No. 7.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce “all documents” responsive to Interrogatory No. 7. Interrogatory No. 7 does not request documents. As such, plaintiffs’ request is overbroad, vague, unintelligible, and constitutes a “fishing expedition” such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs’ request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 8

What year did your baby powder change from talc to corn starch?

ANSWER: Johnson's Baby Powder made with talc has been available from 1945 through 1975 and is currently sold; Johnson's Baby Powder with corn starch was first marketed in 1978.

Request for Production No. 8

Please produce any and all documents responsive to Interrogatory No. 8.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce "all documents" responsive to Interrogatory No. 8. Interrogatory No. 8 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs' request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 9

Please list all persons known by you who:

- a) ever recommended changing from talc to corn starch for baby powder product;
- b) ever made any analysis of your baby powder for fibrous material content;
- c) ever made any analysis of your baby powder for asbestiform material;
- d) ever surveyed your mine(s) for the geological structure prior to or during mining;
- e) ever made any analysis of raw and/or processed material used or considered for use in your baby powder for fibrous material content;
- f) ever made any analysis of raw and/or processed material used or considered for use in your baby powder for asbestiform mineral.

ANSWER: Defendant objects to the overbroad nature of plaintiffs' requests. Identifying all persons without limitation to time, scope, and employment, is unduly burdensome. To identify all persons over the company's 100+ year history is not possible.

a) Defendants object to sub-part (a) as vague and that it is unlimited to time and scope. In addition plaintiff's interrogatory is vague, unduly burdensome, and unlikely to lead to the discovery of relevant evidence. Furthermore,

defendant objects to the extent that it is covered by the attorney/client, work product, party communication/investigatory privileges, and witness statement privileges. Subject to the foregoing objections, defendant's investigation is ongoing. Defendant will supplement its response to this interrogatory as non-objectionable information is discovered.

b) Defendants object to sub-part (b) as vague and overbroad in that it is unlimited to time and scope. In addition plaintiff's interrogatory is vague, unduly burdensome, and unlikely to lead to the discovery of relevant evidence. Furthermore, defendant objects to the extent that it is covered by the attorney/client, work product, party communication/investigatory privileges, and witness statement privileges. Subject to the foregoing objections, analysis have been conducted by certain employees of Johnson & Johnson, McCrone Associates, E.S. Laboratories, Colorado School of Mines Research Institute, and Baine Environmental.

c) Defendants object to sub-part (c) as vague and overbroad in that it is unlimited to time and scope. In addition plaintiff's interrogatory is vague, unduly burdensome, and unlikely to lead to the discovery of relevant evidence. Furthermore, defendant objects to the extent that it is covered by the attorney/client, work product, party communication/investigatory privileges, and witness statement privileges. Subject to the foregoing objections, analysis have been conducted by certain employees of Johnson & Johnson, McCrone Associates, E.S. Laboratories, Colorado School of Mines Research Institute, and Baine Environmental.

d) Defendants object to sub-part (d) in that it is vague, overbroad, and unlimited in time and scope. In addition plaintiff's interrogatory is vague, unduly burdensome, and unlikely to lead to the discovery of relevant evidence. Subject to the foregoing objections, analysis may have been conducted by McCrone Associates, and Colorado School of Mines Research Institute.

e) Defendants object to sub-part (e) as vague, overbroad, and that it is unlimited to time and scope. In addition plaintiff's interrogatory is vague, unduly burdensome, and unlikely to lead to the discovery of relevant evidence. Furthermore, defendant objects to the extent that it is covered by the attorney/client, work product, party communication/investigatory privileges, and witness statement privileges. Subject to the foregoing objections, analysis have been conducted by certain employees of Johnson & Johnson, McCrone Associates, E.S. Laboratories, Colorado School of Mines Research Institute, and Baine Environmental.

f) Defendants object to sub-part (f) as vague, overbroad and that it is unlimited

to time and scope. In addition plaintiff's interrogatory is vague, unduly burdensome, and unlikely to lead to the discovery of relevant evidence. Furthermore, defendant objects to the extent that it is covered by the attorney/client, work product, party communication/investigatory privileges, and witness statement privileges. Subject to the foregoing objections, analysis have been conducted by certain employees of Johnson & Johnson, McCrone Associates, E.S. Laboratories, Colorado School of Mines Research Institute, and Baine Environmental.

Request for Production No. 9

Please produce any and all documents responsive to Interrogatory No. 9.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce "all documents" responsive to Interrogatory No. 9. Interrogatory No. 9 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs' request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 10

Please identify any person having knowledge of relevant facts. A fact witness is a person who "has or may have knowledge of any discoverable matter." As to each witness, please provide the following:

- a. Name;
- b. Address;
- c. Telephone number;
- d. Knowledge and opinions of the witness.

ANSWER: Defendant objects to this Interrogatory as vague and overbroad. The identity of fact witnesses over the 100+ history in which plaintiff requests is virtually impossible to determine all persons who may have facts relevant to this case. Subject to the above objections defendant's investigation is continuing and Defendant's will supplement.

Request for Production No. 10

Please produce any and all documents responsive to Interrogatory No. 10.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce “all documents” responsive to Interrogatory No. 10. Interrogatory No. 10 does not request documents. As such, plaintiffs’ request is overbroad, vague, unintelligible, and constitutes a “fishing expedition” such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs’ request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 11

Please provide the following information as to each testifying expert:

- a. Name;
- b. Address;
- c. Telephone Number;
- d. Facts known by the testifying expert;
- e. Expected substance of testimony of each testifying expert, the mental impressions and opinions of each testifying expert, and any report or other documents prepared by each expert in anticipation of trial.

ANSWER: Defendant objects to this interrogatory as unduly burdensome, vague, and beyond the scope of permissible discovery. Specifically, it is not possible for defendant to list all facts, mental impressions, and opinions known to the testifying expert. Defendant will supplement this interrogatory in accordance with Rule 166(b).

Request for Production No. 11

Please produce any and all documents responsive to Interrogatory No. 11.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce “all documents” responsive to Interrogatory No. 11. Interrogatory No. 11 does not request documents. As such, plaintiffs’ request is overbroad, vague,

unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Furthermore, defendant objects to the extent that plaintiff's request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

(THERE IS NO INTERROGATORY NO. 12)

Request for Production No. 12

As to each testifying expert, please produce any documents, tangible things, physical models, or compilations of data or other material prepared by testifying expert.

RESPONSE: Defendant objects to this request as vague, overbroad, unduly burdensome, and not likely to lead to the discovery of relevant evidence. Defendant is willing to exchange trial exhibits with plaintiff by court order or by agreement of the counsel.

Interrogatory No. 13

Please describe any and all studies of asbestos or asbestiform talc disease in which you, the defendant, participated.

ANSWER: Defendant objects to this interrogatory as vague, overbroad, and unduly burdensome, and not likely to lead to the discovery of relevant evidence. Plaintiff's interrogatory is unlimited in time and scope and is not confined to the issues in this case. Defendant further objects to the extent that plaintiff's interrogatory seeks to evade the attorney/client, work product, party communications/investigatory, and witness statement privileges. Subject to the foregoing objections, defendant's investigation is continuing and defendant will supplement with non-objectionable information as it is discovered.

Request for Production No. 13

Please produce any and all documents responsive to Interrogatory No. 13.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce "all documents" responsive to Interrogatory No. 13. Interrogatory No. 13 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989).

Defendant further objects to the extent that plaintiffs' request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges. Subject to the foregoing objections, defendant's investigation is ongoing. Defendant will make non-objectionable documents available for inspection and copying at a mutually agreeable time and place as they are discovered.

Interrogatory No. 14

Please describe any and all studies of asbestos or asbestiform talc disease in which you, the defendant, were aware of as of :

- a. 1940;
- b. 1950;
- c. 1970;
- d. 1972

ANSWER: Defendant objects to this interrogatory as vague, and overbroad, and not calculated to lead to discovery of relevant evidence. It is impossible to determine what study any individual employee of Defendant was aware of by a certain date.

Request for Production No. 14

Please produce any documents responsive to Interrogatory No. 14.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce "all documents" responsive to Interrogatory No. 14. Interrogatory No. 14 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs' request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 15

Each workers' compensation claim for an alleged asbestos or asbestiform talc injuries, disease or death of an employee which could be used to evaluate the risk of developing an asbestos or asbestiform talc disease and/or providing knowledge to you of asbestos or asbestiform talc.

ANSWER: Defendants object to this Interrogatory in that it is vague, ambiguous, overly broad and compound. Furthermore, this interrogatory will call for a legal conclusion. Subject to the foregoing objections, defendant's investigation is ongoing. Defendant is not aware of any workers compensation claim alleging either asbestos or an asbestiform talc disease by any employee of Johnson & Johnson.

Interrogatory No. 16

Please state if any air sampling was done to determine the exposure to your baby powder during its normal and intended use.

ANSWER: Defendants object to this interrogatory as vague, overbroad, unduly burdensome, and not likely to lead to the discovery of relevant evidence. Furthermore, this interrogatory is not limited to time or scope.

Request for Production No. 15

Please produce any and all documents responsive to Interrogatory No. 16.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce "all documents" responsive to Interrogatory No. 16. Interrogatory No. 16 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loftin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs' request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 17

Please identify each mineralogist employed by you and/or consulted by you at any time before 1975. Please provide the last known address, telephone number, vital status and dates of employment and/or consultation.

ANSWER: Defendants object to plaintiffs' request in that it is duly burdensome and overbroad for defendants to list every mineralogist that may have been consulted with prior to 1975. Subject to the foregoing objections, certain employees listed in response to Interrogatory No. 9 may be mineralogist. Defendant's investigation is ongoing. Defendant will supplement this interrogatory as persons are identified.

Request for Production No. 16

Please produce any and all documents responsive to Interrogatory No. 17.

RESPONSE: Defendant objects to this request for the reason that it is vague and overbroad, and fails to give defendant fair notice of what information or documents are being requested. Specifically, plaintiff requests defendant to produce "all documents" responsive to Interrogatory No. 17. Interrogatory No. 17 does not request documents. As such, plaintiffs' request is overbroad, vague, unintelligible, and constitutes a "fishing expedition" such as that disallowed by the Texas Supreme Court in *Loflin v. Martin*, 776 S.W.2d, 145 (Tex. 1989). Defendant further objects to the extent that plaintiffs' request seeks to evade the attorney/client, work product, party communication/investigatory, and witness statement privileges.

Interrogatory No. 18

Please identify each physician employed by you at any time before 1975. Please provide the last known address, telephone number, vital status and dates of employment.

ANSWER: Defendants object to plaintiffs' request in that it is unduly burdensome and overbroad for defendants to list every physician employed prior to 1975. Subject to the foregoing objection, Defendant will supplement as persons are identified.

Interrogatory No. 19

Please identify each geologist employed by you an/or consulted by you at any time before 1975. Please provide the last known address, telephone number, vital status and dates of employment and/or consultation.

ANSWER: Defendants object to plaintiffs' request in that it is unduly burdensome and overbroad for defendant to list every geologist that may have been consulted with prior to 1975. Subject to the foregoing objections, certain employees listed in response to Interrogatory No. 9 may be geologist. Defendant's investigation is ongoing. Defendant will supplement this interrogatory as persons are identified.

Interrogatory No. 20

Each document evidencing health warnings provided by you or to you before 1975 concerning the asbestos material or asbestos-containing products:

- a. used by you as an ingredient of a product;
- b. made by another and marketed by you.

ANSWER: a) Defendants object to plaintiffs' Interrogatory No. 20 in that it is vague and ambiguous. Subject to the foregoing objections, no warning related to asbestos would be applicable or required.

b) Defendants object to plaintiffs' Interrogatory No. 20 in that it is vague and that it does not identify warning related to what product. Subject to the foregoing objection, defendant has not marketed an asbestos containing product manufactured by another.

Interrogatory No. 21

Please identify each industrial hygienist employed by you and/or consulted by you at any time before 1975. Please provide the last known address, telephone number, vital status and dates of employment and/or consultation.

ANSWER: Defendants object to plaintiffs' request in that it is unduly burdensome and overbroad for defendants to list every industrial hygienist that may have been consulted with prior to 1975. Subject to the foregoing objection, Defendant will supplement as persons are identified.

Interrogatory No. 22

Documents which describe the asbestos content or absence of asbestos in your baby powder sold or manufactured by you or related companies of yours from 1945 through 1975.

ANSWER: Defendants object to this interrogatory as vague, ambiguous, and unintelligible. Specifically, the interrogatory does not ask a question but merely makes a statement, and therefore, as such can not be answered and should be rephrased. Subject to the foregoing objections, defendant's investigation is ongoing. Defendant will supplement its response to this interrogatory as information is discovered.

Interrogatory No. 23

Please list each and every mine that was utilized by your company for talc. Please include complete address and dates of use.

ANSWER: Defendants object to this Interrogatory as over broad in that it is not limited to time or to cosmetic talc. Subject to the foregoing objections, Defendant answers, from 1945 until approximately 1964 from Val Chisone, Italy and from

1964 until approximately 1975 from Hammondsville Mine, Vermont, U.S.A.

Request for Production No. 17

Each workers' compensation claim or notice of injury filed before 1980 for any allegation of asbestos or asbestiform talc illnesses, including without limitation, asbestosis, pneumoconiosis, or mesothelioma.

RESPONSE: Defendant objects to plaintiffs' request as vague, overbroad, unduly burdensome, and not likely lead to the discovery of relevant evidence. Plaintiff's request is not limited in time and scope or to any specific entity. Plaintiff's request does not identify from whom it is requesting documents. Subject to the foregoing objections, defendant has no documents responsive to this request.

Request for Production No. 18

Please produce each version of your "corporate biography" or published company history, whether an in-house effort, and "authorized" version or otherwise.

RESPONSE: Defendants object to this request as overbroad, vague, unduly burdensome, and not likely to lead to the discovery of any relevant evidence. Further, plaintiff's request is not limited in time or scope.

Request for Production No. 19

Documents evidencing:

- a. the identity of each of your insurer(s), including property loss, workers' compensation and general liability;
- b. the extent of your yearly liability coverage relative to the claims raised to this suit.

RESPONSE: Defendants object to this request as vague, overbroad and likely to lead to the discovery of relevant evidence. Furthermore, plaintiff's request is not limited in either time or scope. Subject to the foregoing objections, for the years of exposure Johnson & Johnson Consumer Companies, Inc., had coverage for claims provided through self insurance and The Aetna Property & Casualty Company in varying amounts ranging from 1.5 million through 50 million.

Request for Production No. 20

Research or studies which you, the defendant, possess conducted by NIOSH, Vermont Health Department, Mining Enforcement and Safety Administration (MESA), OSHA, and/or Walter C.

McCrone and Associates concerning asbestos or asbestiform talc illnesses.

RESPONSE: Defendant objects to this request as vague, overbroad, unduly burdensome, and not calculated to lead to the discovery of relevant evidence. Defendant's document review is ongoing. Defendants will make non-objectionable documents available for copying and inspection at a mutually agreeable time and place as they are discovered.

Request for Production No. 21

Please provide a complete copy of "Talc: A Possible Occupational and Environmental Carcinogen", authored by H.P. Blejer and R. Arlon, 1973, showing who received each copy.

RESPONSE: Defendant objects to this request to the extent that it calls for documents subject to the attorney/client, party communications, work product, investigative and witness statement privileges. Subject to the foregoing objections, documents responsive to this request will be made available at a mutually agreeable place and time.

Request for Production No. 22

Please provide a copy of "The Biology of Talc", Brit. J. Ind. Med. 33: 217, 1976, authored by G.Y. Hildick-Smith, showing who received each copy.

RESPONSE: Defendant objects to this request to the extent that it calls for documents subject to the attorney/client, party communications, work product, investigative and witness statement privileges. Subject to the foregoing objections, documents responsive to this request will be made available for inspection and copying at a mutually agreeable time and place.

Request for Production No. 23

Research or studies conducted by or with any trade associations that in any way discuss asbestos or asbestiform minerals in consumer products prior to 1975.

RESPONSE: Defendant objects to this request as overbroad, vague, not likely to lead to the discovery of relevant evidence. Further, plaintiff's request is not limited in time and scope or to projects in which Defendant participated. Furthermore, Defendant objects to the extent that it calls for documents subject to the attorney/client, party communications, work product, investigative and witness statement privileges. Subject to the foregoing objections, defendant's investigation is ongoing. Defendant will make documents responsive to this

request available for copying and inspection at a mutually agreeable time and place as they are discovered.

Request for Production No. 24

Produce each air sampling results for dust, including asbestos or asbestiform minerals at your mining, milling and packaging plants.

RESPONSE: Defendant objects to this request as overbroad, vague, and not likely to lead to the discovery of relevant evidence. Further, plaintiff's request is limited in time or scope. Defendant objects to this request to the extent that it calls for documents subject to the attorney/client, party communications, work product, investigative and witness statement privileges. Defendants document review is ongoing. Non-objectionable documents responsive to this request will be made available for inspection at a mutually convenient time and place as they are discovered.

Request for Production No. 25

Documents not dated greater than 1975 which mention compliance with or changes to, or proposed changes to, any regulations, statutes, rules or standards for the use or handling of materials which yield pneumoconiosis producing dust, including asbestosis or mesothelioma.

RESPONSE: Defendant objects to this request to the extent that it calls for documents subject to the attorney/client, party communications, work product, investigative and witness statement privileges. Further, plaintiff's request is vague, overbroad and not calculated to lead to the discovery of relevant evidence. Further, plaintiff's request is not limited to time or scope. Subject to the foregoing objections, defendants will make non-objectionable documents that are responsive to this request available for copying and inspection at a mutually agreeable time and place as they are discovered.

Request for Production No. 26

Documents not dated greater than 1975 which mention proposed or prescribed warnings, cautions or instructions regarding the potential health hazards or pneumoconiosis-producing dust, including asbestos or asbestiform minerals for use upon or in your baby powder, your manuals or catalogs ("catalogs" means those documents regarding products made or sold by you, the defendant and your product literature).

RESPONSE: Defendant objects to this request to the extent that it calls for documents subject to the attorney/client, party communications, work product, investigative and

witness statement privileges. Further, plaintiff's request is vague, overbroad and not calculated to lead to the discovery of relevant evidence. Further, plaintiff's request is not limited to time or scope. Subject to the foregoing objections, defendants will make non-objectionable documents that are responsive to this request available for copying and inspection at a mutually agreeable time and place as they are discovered.

Request for Production No. 26

Please produce all documents provided to your sale and/or marketing organization which concern asbestos being found or not being found in baby powder.

RESPONSE: Defendant objects to this request to the extent that it calls for documents subject to the attorney/client, party communications, work product, investigative and witness statement privileges. Further, plaintiff's request is vague, overbroad and not calculated to lead to the discovery of relevant evidence. Further, plaintiff's request is not limited to time or scope. Subject to the foregoing objections, defendants will make non-objectionable documents that are responsive to this request available for copying and inspection at a mutually agreeable time and place as they are discovered.

VERIFICATION

STATE OF _____ §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, who being by me here and now duly sworn upon oath says that he is a _____ of Johnson & Johnson Consumer Companies, Inc., duly authorized to verify the statements contained in the foregoing instrument for and on behalf of J Johnson & Johnson Consumer Companies, Inc., that certain of these matters stated herein are not within the personal knowledge of affiant, and that the facts stated herein have been assembled by authorized agents, employees and counsel of Johnson & Johnson Consumer Companies, Inc., and affiant is informed the that the facts stated therein are true.

SUBSCRIBED AND SWORN TO BEFORE ME by the said affiant on this the ____ day of _____, 1998.

Notary Public in and for
the State of _____

My commission expires: _____

CAUSE NO. D-157,746

DARLENE COKER, ET AL

VS.

BILL THAMES PHARMACY, INC.,
CORRIGAN ENTERPRISES, INC.
f/k/a JOHNSON-JOHNSON BABY f/k/a
S.W.S. PHARMACY INC., FERTITTAS
FINER FOODS, INC., GIANT FOOD
DISCOUNT CITY, INC., HENKE &
PILLOT, INC., HSTN. INC. f/k/a
J&J BABY PRODUCTS, JOHNSON &
JOHNSON PROFESSIONAL, LOVOI
AND SONS PHARMACIES, INC.,
MCNEIL PPC INC. PRODUCTS, THE
KROGER COMPANY

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

136TH JUDICIAL DISTRICT

JOHN S. APPELTON
DISTRICT CLERK

98 MAY 15 10:11

FILED
DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

**DEFENDANT'S NOTICE OF FILING VERIFICATION TO PLAINTIFF'S
FIRST SET OF INTERROGATORIES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Johnson & Johnson Consumer Companies, Inc., Defendant in the
above-styled and numbered cause, and files the attached verification to Plaintiff's First Set of
Interrogatories.

Respectfully submitted,

MEHAFFY & WEBER

Attorneys for Johnson & Johnson
Professional, Inc. and McNeil PPC, Inc. f/k/a
Johnson-Johnson Baby Products

By Gene Williams
Gene M. Williams, Of Counsel
State Bar No. 21535300
Sandra F. Clark
State Bar No. 04294520

Post Office Box 16
Beaumont, Texas 77704
Telephone: 409/835-5011
Telecopier: 409/835-5729

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been
forwarded to all counsel of record on this the 12 day of May, 1998.

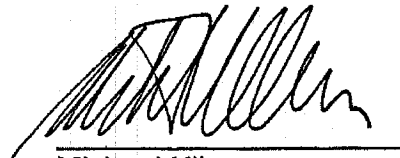
Paul Heyburn
PAUL HEYBURN

VERIFICATION

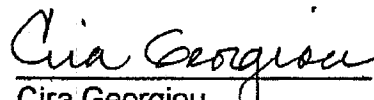
STATE OF NEW JERSEY §

COUNTY OF MIDDLESEX §

BEFORE ME, the undersigned authority, on this day personally appeared Michael Ullmann, who being by me here and now duly sworn upon oath says that he is Secretary of Johnson & Johnson Consumer Companies, Inc., duly authorized to verify the statements contained in the foregoing instrument for and on behalf of Johnson & Johnson Consumer Companies, Inc., that certain of these matters stated herein are not within the personal knowledge of affiant, and that the facts stated herein have been assembled by authorized agents, employees and counsel of Johnson & Johnson Consumer Companies, Inc., and affiant is informed that the facts stated therein are true.


Michael Ullmann

SUBSCRIBED AND SWORN TO BEFORE ME by the said affiant
on this the 7th day of May, 1998.


Cira Georgiou
Notary Public in and for
The State of New Jersey

My commission expires: January 5, 1999

MEHAFFY & WEBER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
2615 CALDER AVENUE
POST OFFICE BOX 16
BEAUMONT, TEXAS 77704

ONE ALLEN CENTER
500 DALLAS, SUITE 1200
HOUSTON, TEXAS 77002
TELEPHONE (713) 655-1200
FAX (713) 655-0222

1006 GREEN AVENUE
P.O. BOX 189
ORANGE, TEXAS 77630
TELEPHONE (409) 886-7766
FAX (409) 886-7790

TELEPHONE (409) 835-5011
FAX (409) 835-5177
(409) 835-5729

June 25, 1998

Re: **NO. D-157746; Darlene Coker, and spouse Roy Coker vs. Bill Thames Pharmacy Inc., et al; M&W File No. 3125-11**

Mr. John S. Appleman
District Clerk
Jefferson County Courthouse
P. O. Box 3707
Beaumont, Texas 77704

Dear Mr. Appleman:

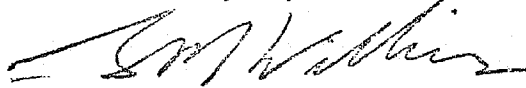
Enclosed please find a **RULE 11 AGREEMENT** in connection with the above styled and numbered cause.

Please file stamp the enclosed copy of this letter reflecting the date of filing.

By copy hereof, I am forwarding a copy of said instrument to opposing counsel herein.

Thank you for your courtesy and attention to this matter.

Yours very truly,



Gene M. Williams
For the Firm

GMW/jah
Enc.

MW/100285

FILED
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JEFFERSON COUNTY, TEXAS
98 JUN 25 AM 1:45
JOHN S. APPLEMAN
DISTRICT CLERK

MEHAFFY & WEBER

Mr. John S. Appleman
June 25, 1998

Page 2

cc:

Herschel L. Hobson
The Law Offices of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701

MW/100285

ONE ALL FRONTIER
500 DALLAS SUITE 1200
HOUSTON, TEXAS 77002
TELEPHONE (713) 655-1200
FAX (713) 655-0222

MEHAFFY & WEBER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
2615 CALDER AVENUE
POST OFFICE BOX 16
BEAUMONT, TEXAS 77704

TELEPHONE (409) 836-5011
FAX (409) 836-5177
(RUP) 803-5229

1000 GREEN AVENUE
P.O. BOX 189
ORANGE, TEXAS 77630
TELEPHONE (409) 886-7700
FAX (409) 886-7750

June 24, 1998

Re: NO. D-157746; Darlene Coker, and spouse Roy Coker vs. Bill Thames Pharmacy
Inc., et al; M&W File No. 3125-11

Herschel L. Hobson
Law Offices of Herschel L. Hobson
2190 Harrison
Beaumont, TX 77701

Dear Herschel:

This letter will serve as a Rule 11 Agreement between the parties in this case.

We recognize that the next thing that needs to happen in this case is for you to determine the extent of your causation testimony. We will immediately deliver to you the blocks that we have that will allow Dr. Abraham to perform the digestion study he has discussed.

Prior to Dr. Abraham beginning the digestion study, he will confirm that there will be sufficient tissue remaining for us to perform our own study at a later time if that becomes necessary. Also, you will agree and instruct Dr. Abraham that the results of any digestion study or destructive use of this tissue will be maintained in a form where experts on behalf of the defendant can review the work and "re-read" as it were, after he performs his study.

Dr. Abraham will perform his work and have a final report regarding same by July 31, 1998.

At this point in time the parties will enter into a "standstill" agreement. The parties will advise the Court that they will not be ready for trial at the current settings of September and, if necessary, the parties will file a Joint Motion for Continuance of that setting. This standstill agreement will not effect dates that have already passed in the current scheduling order. In other words, by example, the plaintiff will not be allowed to identify any additional experts as those deadlines have passed. However, the defendants have not yet identified their experts and so the

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JOHN S. APPEL
DISTRICT CLERK

MEHAFFY & WEBER

Mr. Herschel Hobson
June 24, 1998

Page 2

standstill agreement would effectively abate the defendant's expert deadlines during the term of this agreement.

The parties anticipate approaching the Court, if testing proves this necessary, to ask for certain modification of the scheduling order to accommodate a new trial setting, but in no event will the defendant's designation of experts be due until a minimum of two weeks after a final report is delivered to defendant's counsel showing the results of Dr. Abraham's tests.

The "standstill" agreement envisions that the defendant will provide no more discovery to the plaintiff and that the plaintiff will contact the various court reporting services and third parties which have been served with depositions on written questions to inform them that production of documents will not be required until further notice by the parties. These would include McCrone Associates, E. S. Laboratories Colorado School of Mines Research Institute and Baine Laboratories.

Please sign a copy of this agreement for filing with the Court and return it to me at your earliest convenience.

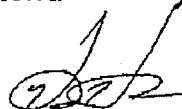
Yours Very Truly,

[Original signed by Gene M. Williams]

Gene M. Williams
For the Firm

GMW/jah

Approved:


Herschel Hobson

MW/126321

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS

'98 MAY 22 P4:47

May 22, 1998

Via Hand-Delivery

JOHN S. APPLEMAN
DISTRICT CLERK

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

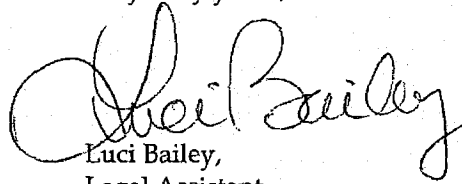
Dear Mr. Appleman:

Enclosed for filing in the above-referenced case, please find Plaintiffs' 5/22/98 Fact Witness Designations.

All counsel of record are being furnished a copy of same.

Thank you for your attention in this regard.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/dm

Enclosure

cc: Mr. Roger Worthington Via facsimile
Mr. Gene Williams Via facsimile

CAUSE NO. D-157,746

DARLENE COKER, and spouse,
ROY COKER

vs.

BILL THAMES PHARMACY, INC., ET AL

§
§
§
§
§

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

136TH JUDICIAL DISTRICT.

FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS

'98 MAY 22 P4:47

JOHN S. APPLEMAN
DISTRICT CLERK

PLAINTIFFS' 5/22/98 FACT WITNESS DESIGNATIONS

COME NOW the Plaintiffs in the above-styled and numbered cause and, in accordance with the 5/14/98 Amended Pre-Trial Docket Control Scheduling Order, designate the following fact witnesses. Plaintiffs are filing a preliminary fact witness list based on the best information available as of this date. They are as follows:

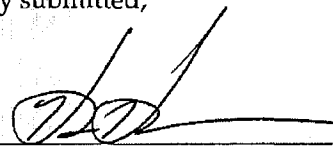
- COKER, DARLENE, 12 Dana Drive, Lumberton, TX 77657, (409) 755-1616
- COKER, ROY, 12 Dana Drive, Lumberton, TX 77657, (409) 755-1616
- DECKARD, CRYSTAL, 9920 South Gwendolyn Place, Highlands Ranch, CO 80126, (303) 683-5591
- STEPHENS, KATHRYN, 727 Oak Harbor, Houston, TX 77062, (281) 286-8477
- LARKIN, DIANE, Colorado Springs, CO, phone number unknown
- ADAMS, MELBA, Route 2, Box 404, Newton, TX 75966, (409) 383-1274
- JOHNSON & JOHNSON CONSUMER PRODUCTS INC., 199 Grandview Road, Skillman, NJ 08558, (908) 874-1000, and custodian of records and accounts for same
- JOHNSON & JOHNSON PROFESSIONAL INC., One Johnson & Johnson Plaza, New Brunswick, NJ 08933, (908) 524-0400, and custodian of records and accounts for same
- JOHNSON & JOHNSON INC., 2312 Beltline Blvd., Columbia, SC 29201, (803) 738-1228, and custodian of records and accounts for same
- JOHNSON & JOHNSON BABY PRODUCTS, 545 Old Elberton Road, Royston, GA 30662, (706) 245-7353, and custodian of records and accounts for same
- Any and all fact witnesses designated by defendant.

Plaintiffs reserve the right to supplement this designation because there are discovery issues that still need to be resolved with the defendant.

Respectfully submitted,

The Law Offices Of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701
Ph. #: (409) 838-6410
Fax #: (409) 838-6084

By: _____



Herschel L. Hobson
TBA# 09744600

ATTORNEY FOR PLAINTIFFS

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing instrument has been duly forwarded to all counsel of record on this 22nd day of May, 1998.



Herschel L. Hobson

CAUSE NO. D-157,746

DARLENE COKER, ET AL	§	IN THE DISTRICT COURT OF
	§	
VS.	§	JEFFERSON COUNTY, TEXAS
	§	
BILL THAMES PHARMACY, INC.,	§	
CORRIGAN ENTERPRISES, INC. f/k/a	§	
JOHNSON-JOHNSON BABY f/k/a	§	
S.W.S. PHARMACY INC.,	§	
FERTITTAS FINER FOODS, INC.,	§	
GIANT FOOD DISCOUNT CITY, INC.,	§	
HENKE & PILLOT, INC., HSTN. INC.	§	
f/k/a J&J BABY PRODUCTS,	§	
JOHNSON & JOHNSON	§	
PROFESSIONAL, LOVOI AND SONS	§	
PHARMACIES, INC., MCNEIL PPC	§	
INC. PRODUCTS, THE KROGER	§	
COMPANY	§	136TH JUDICIAL DISTRICT

DEFENDANT'S PRELIMINARY DESIGNATION OF FACT WITNESSES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Johnson & Johnson Consumer Companies, Inc., Defendant in the above-styled and numbered cause, and pursuant to the Court's Scheduling Order dated May 14, 1998, files this its preliminary designation of fact witnesses subject to the following reservations:

This defendant reserves the right to supplement the fact witness designation after additional discovery has been completed.

I. The following persons are either current or former employees Johnson & Johnson that may have knowledge of facts related to the above lawsuit.

10:58 21 JUL 2023

MW/122782

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JEFFERSON CO. TEXAS

Dr. C. Ackerman
Johnson & Johnson
New Brunswick, NJ

William Ashton
Johnson & Johnson
Skillman, NJ

Frank Bolden
Johnson & Johnson
New Brunswick, N.J.

Michael Chudkowski
Johnson & Johnson
Skillman, New Jersey

R.J. Ciatto
Johnson & Johnson
New Brunswick, NJ

J. Clark
Johnson & Johnson
New Brunswick, NJ

Randy Corder
Johnson & Johnson
Royston, Georgia

Ed Correia
Johnson & Johnson

J. Dattre,
Johnson & Johnson
New Brunswick, NJ

W.R. Dean
Johnson & Johnson
Deavenport, B.

J. Michael DeMarco
Johnson & Johnson
Skillman, NJ

M. Edenbaum
Johnson & Johnson
New Brunswick, NJ

C. Gagliardi
Johnson & Johnson
New Brunswick, NJ

Regina Gallagher
Johnson & Johnson
Skillman, NJ

Dr. Garrison
Johnson & Johnson
New Brunswick, NJ

R. George
Johnson & Johnson
New Brunswick, NJ

H. Gessner
Johnson & Johnson
New Brunswick, NJ

D. F. Grabarz
Johnson & Johnson
New Brunswick, NJ

N. Greenberg
Johnson & Johnson
New Brunswick, NJ

Dr. M. Gross
Johnson & Johnson
New Brunswick, NJ

D.H. Hamer
Johnson & Johnson
New Brunswick, N.J.

G. Heinze
Johnson & Johnson
New Brunswick, NJ

Anthony A. Herrmann, M.D.
Johnson & Johnson
New Brunswick, NJ

Dr. Gavin Hildick-Smith
Johnson & Johnson
New Brunswick, NJ

Harold Hogan
Johnson & Johnson
New Brunswick, NJ

Aubrey Holcombe
Johnson & Johnson

Dr. John Hopkins
Johnson & Johnson
Skillman, NJ

R. Howland
Johnson & Johnson
New Brunswick, NJ

Dr. Hutchins
Johnson & Johnson
New Brunswick, NJ

J. Jackson
Johnson & Johnson
New Brunswick, NJ

T. Janicek
Johnson & Johnson
New Brunswick, NJ

Sam Jiwrjka
Johnson & Johnson
Royston, GA

James F. Jones
Johnson & Johnson
Royston, GA

Jerry Jordan
Johnson & Johnson
Royston, GA

William L. Komianos
Johnson & Johnson
Skillman, NJ

P. Kraft
Johnson & Johnson
New Brunswick, NJ

George Lee
Johnson & Johnson
Skillman, NJ

E. Lojacono
Johnson & Johnson
New Brunswick, NJ

Dr. Geoff Lord
Johnson & Johnson
New Brunswick, NJ

A. Marks
Johnson & Johnson
New Brunswick, NJ

Dr. Marvel
Johnson & Johnson
New Brunswick, NJ

B. McClain
Johnson & Johnson
New Brunswick, NJ

R. McNealy
Johnson & Johnson
New Brunswick, NJ

W. McQuade
Johnson & Johnson
New Brunswick, NJ

Marjorie McTernan, CPI
Johnson & Johnson
Skillman, New Jersey

R. D. Merz
Johnson & Johnson
Raritan, NJ

Dr. Arnold Miles
Johnson & Johnson
Raritan, NJ

C. Milner
Johnson & Johnson
New Brunswick, NJ

K. Miluszewski
Johnson & Johnson
New Brunswick, NJ

C. Mitchell
Johnson & Johnson
New Brunswick, NJ

James Molnar
Johnson & Johnson
Skillman, New Jersey

Aileen Mroz
Johnson & Johnson
Skillman, NJ

Jim Murray
Johnson & Johnson
New Brunswick, NJ

J. Norton
Johnson & Johnson
New Brunswick, NJ

Mathews A. Nunes, Ph.D.
Johnson & Johnson
Skillman, N.J.

L. Orlando
Johnson & Johnson
New Brunswick, NJ

D. Padgett
Johnson & Johnson
New Brunswick, NJ

Dibakar Panigrahi
Johnson & Johnson
New Brunswick, NJ

R. Piliero
Johnson & Johnson
New Brunswick, NJ

N. A. Poirier
Johnson & Johnson
New Brunswick, NJ

S. Rearstad
Johnson & Johnson
New Brunswick, NJ

Angela Recine
Johnson & Johnson

F.R. Rolle, Ph.D
Johnson & Johnson
New Brunswick, NJ

Lucy Romeo
Johnson & Johnson
New Brunswick, NJ

J. Runnells
Johnson & Johnson
New Brunswick, NJ

R. S. Russell
Johnson & Johnson
New Brunswick, NJ

Paul J. Russo
Johnson & Johnson
Skillman, NJ

P. Saunders
Johnson & Johnson
New Brunswick, NJ

Steven Sawchuk, M.D.
Johnson & Johnson

M. Scales
Johnson & Johnson
New Brunswick, NJ

Dr. Jack Schelz
Johnson & Johnson
New Brunswick, NJ 08901

Joseph Schmidt
Johnson & Johnson
Skillman, NJ 08558

E. Scott
Johnson & Johnson
New Brunswick, NJ

Bruce Semple, M.D.
Johnson & Johnson
Raritan, NJ

F. Servas
Johnson & Johnson
New Brunswick, NJ

Dr. Tom H. Shelley
Johnson & Johnson
New Brunswick, NJ

E. Shepherd
Johnson & Johnson
New Brunswick, NJ

Dr. William T. Sherman
Johnson & Johnson
Raritan, NJ

J. N. Sivertson
Johnson & Johnson
New Brunswick, NJ

P. Sternenberg
Johnson & Johnson
New Brunswick, NJ

Mary Szemis
Johnson & Johnson
New Brunswick, NJ

L. Toon
Johnson & Johnson
New Brunswick, NJ

D. Vassar
Johnson & Johnson
New Brunswick, NJ

A.S. Vitarius
Johnson & Johnson
New Brunswick, NJ

R. Vora
Johnson & Johnson
New Brunswick, NJ

K. Weber
Johnson & Johnson
New Brunswick, NJ

R. Weeks
Johnson & Johnson
New Brunswick, NJ

J. Williams
Johnson & Johnson
New Brunswick, NJ

II. The following persons are either current or former employees Windsor Minerals, its predecessors, or successors that may have knowledge of facts related to the above lawsuit.

Karen L. Althouse
Windsor Minerals, Inc.
Windsor, VT

Rose Buzwell
Windsor Mineral, Inc.
Windsor, VT

John Carpenter
Windsor Mineral
Windsor, VT

W. A. Dezaine
Johnson Mine

Emil Esckelson
Eastern Magnesia Talc Company
South Burlington, VT.

Lee Esckilson
Windsor Mineral Company

Stephen P. Falk
Windsor Minerals
Windsor, VT

C. Gallion
Windsor Minerals, Inc.

Helen Grayson
Windsor Mineral Company
Windsor, VT 05089

James R. Guay
Windsor Minerals, Inc.
Windsor, VT

Harold G. Hills
Windsor Minerals, Inc.

Windsor, Vermont

Joan R. Johnson
Windsor Minerals, Inc.
Windsor, VT

Arthur R. Kimball
Windsor Minerals Company
Windsor, VT

Bruce E. Kobel
Windsor Minerals, Inc.
Windsor, VT

Arthur La Pierre
Windsor Minerals, Inc.
Windsor, VT

H. LeMaster
Eastern Magnesia Talc Company and Windsor Minerals

W. W. Magnus
Eastern Magnesia Talc Co., Inc.
Burlington, VT

E. W. Magnus
Eastern Magnesia Talc

Howard Mailer
Windsor Mineral Company

P. Main
Windsor Minerals, Inc.
Windsor, VT

Edward F. McCarthy
Luzenac America
Englewood, Colorado

Roger N. Miller
Windsor Minerals, Inc.
Windsor, Vermont

Roger W. Perkins
Eastern Magnesia Talc Co., Inc.
Burlington, VT

James F. Reilly
Eastern Magnesia Talc Co.
Burlington, VT

Lorenzo Rodizza
Windsor Minerals, Inc.
Windsor, VT

C. P. Smith
Eastern Magnesia Talc Co., Inc.
Burlington, VT

Richard Zazenski
Luzenac America
Three Forks, Montana

Vernon Zeitz
Windsor Mineral Company
Windsor, VT

III. The following persons are either current or former employees of the McCrone Laboratories that may have knowledge of facts related to the above lawsuit. Some of the following individuals may be designated by Johnson & Johnson as expert witnesses in this case.

Laurie R. Bain
McCrone Environmental Services, Inc.
Westmont, Illinois 60559
Randy Boltin
McCrone Environmental Services
Norcross, GA

John P. Bradley, Ph.D.
McCrone Associates, Inc.
Westmont, Illinois

Don Brooks
McCrone

Anthony S. Claveria
McCrone Environmental Services, Inc.
Norcross, GA

Richard M. Ellis, Jr.
Walter C. McCrone Associates, Inc.
Chicago, Illinois 60616

Thomas J. Gore, III
Walter C. McCrone Associates, Inc.
Chicago, Illinois

Gene Grieger
Walter C. McCrone Associates, Inc.
Chicago, Illinois

Ralph J. Hinch, Jr.
Walter C. McCrone Associates, Inc.
Chicago, Illinois

Thomas Kremer
McCrone Environmental Services, Inc.
Norcross, GA

Joseph A. Krewer
McCrone Environmental Services, Inc.
Norcross, GA

Thomas G. Laubenthal
McCrone Environmental Services, Inc.
Norcross, GA

James Martin
Walter C. McCrone Associates, Inc.
Chicago, Illinois

James R. Millette, Ph.D.
Walter C. McCrone Associates, Inc.
Chicago, Illinois

Mark Palenik
Walter C. McCrone Associates, Inc.
Chicago, Illinois

Deborah P. Polenda
Walter C. McCrone Associates, Inc.
Chicago, Illinois

Carol Rodgers
Walter C. McCrone Associates, Inc.
Chicago, Illinois

Richard Shimps
Walter C. McCrone Associates, Inc.
Chicago, Illinois

E. Kent Sprague
McCrone Environmental Services, Inc.
Norcross, GA

Ian Stewart
Walter C. McCrone Associates, Inc.
Chicago, Illinois

IV. The following persons may have knowledge of facts related to the above lawsuit. Some of the following individuals may be designated by Johnson & Johnson as expert witnesses in this case.

Maryanne G. Boundy
Department of Environmental Health Sciences
Harvard School of Public Health
Boston, MA

Gordon E. Brown
Princeton University
Princeton, NJ

R. L. Buschbom
Systems Department
Battelle, Pacific Northwest Laboratories
Richland, WA

W.T. Caneer
Colorado School of Mines Research Institute
P.O.Box 112
Golden, Colorado 80401

G. Gay
Ospedale Valdese, Pomaretto
Torino, Italy

Stephen D. Gettings
The Cosmetic, Toiletry and Fragrance Association
Washington, D.C.

Jerome B. Krause
Colorado School of Mines Research Institute
Golden, Colorado

Arthur M. Langer
Environmental Sciences Laboratory
Mount Sinai School of Medicine of the City University of New York
New York City

Eva Negri
Mario Negri Institute for Pharmacological Research
Milan, Italy

M. G. Pattengill
Mining Division
Colorado School of Mines Research Institute
P.O Box 112
Golden, Colorado 80401

Giorgio Piolatto, M.D.
Turin University
Torino, Italy

G. Pira, Institute of Medical Statistics
University of Milan
Milan, Italy

Dr. F. D. Pooley
University College
Newport Road
Cardiff, Wales

Giovanni Scansetti, M.D.

Turin University
Torino, Italy

Canzio A. Romano, M.D.
Turin University
Torino, Italy

Giovanni F. Rubino, M.D.
Turin University
Torino, Italy

C.R. Watson
Systems Department
Battelle, Pacific Northwest Laboratories
Richland, WA 99352

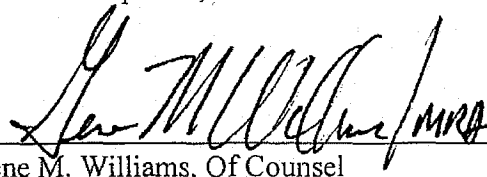
G.M. Zwicker
Biology Department, Battelle

Defendant reserves the right to amend, supplement and modify this Designation of Fact
Witnesses.

Respectfully submitted,

MEHAFFY & WEBER
Attorneys for Johnson & Johnson
Consumer Companies, Inc.

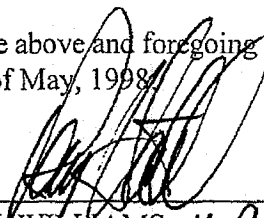
By


Gene M. Williams, Of Counsel
State Bar No. 21535300

Post Office Box 16
Beaumont, Texas 77704
Telephone: 409/835-5011
Telecopier: 409/835-5729

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been forwarded to all counsel of record on this the 22 day of May, 1998.



GENE M. WILLIAMS

M. Raymond Hatcher

CAUSE NO. D-157,746

DARLENE COKER, ET AL

VS.

BILL THAMES PHARMACY, INC.,
CORRIGAN ENTERPRISES, INC.
f/k/a JOHNSON-JOHNSON BABY f/k/a
S.W.S. PHARMACY INC., FERTITTAS
FINER FOODS, INC., GIANT FOOD
DISCOUNT CITY, INC., HENKE &
PILLOT, INC., HSTN. INC. f/k/a
J&J BABY PRODUCTS, JOHNSON &
JOHNSON PROFESSIONAL, LOVOI
AND SONS PHARMACIES, INC.,
MCNEIL PPC INC. PRODUCTS, THE
KROGER COMPANY

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

136TH JUDICIAL DISTRICT

**DEFENDANTS' OBJECTIONS TO PLAINTIFF'S DEPOSITION
ON WRITTEN QUESTIONS AND TO THE COMMISSION
OF NELL MCCALLUM & ASSOCIATES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Johnson & Johnson Consumer Companies, Inc., a Defendant in the above lawsuit, and files this its Objections to Depositions on Written Questions to E. S. Laboratories and to the Commission of Nell McCallum & Associates.

Defendant objects to the appointment of Nell McCallum & Associates by commission to take the deposition on written questions to E.S. Laboratories because she is not authorized under the Texas Rules of Civil Procedure. *See* Tex. R. Civ. P. 188. In addition, Defendant makes the following objections to the depositions on written questions:

3. If you answered "yes" to Questions No. 2, please provide the complete legal name, last known address, and phone number of the person who performed the analysis.

OBJECTION: Defendant objects to the above question as vague, ambiguous, assumes facts not in evidence, and calls for speculation.

4. If you answered "yes" to Question No. 2, please state if you found the presence or absence of asbestiform minerals.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. Furthermore, the question requires witness to speculate and provide an expert opinion that witness is not qualified to express. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

5. Please produce any and all documents responsive to Questions 2-4.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. In addition, the question is over broad and unintelligible and fails to give witness fair notice of what information or documents are being requested and violates Tex. R. Civ. P. 208. Furthermore, Plaintiff's request violates Tex. R. Civ. P. 201 in that no subpoena duces tecum was attached to the deposition on written questions. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

7. If you answered "yes" to Question No. 6, what were your findings regarding the fibrous and asbestiform material content?

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. Furthermore, the question requires witness to speculate and provide an expert opinion that witness is not qualified to express. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

8. If you answered "yes" to Question No. 6, please provide the complete legal name, last known address and phone number of the person who performed the analysis.

OBJECTION: Defendant objects to the above question as vague, ambiguous, assumes facts not in evidence, and calls for speculation.

9. Please produce any and all documents responsive to Question Nos. 6-8.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. In addition, the question is over broad and unintelligible and fails to give witness fair notice of what information or documents are being requested and violates Tex. R. Civ. P. 208. Furthermore, Plaintiff's request violates Tex. R. Civ. P. 201 in that no subpoena duces tecum was attached to the deposition on written questions. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

11. If you answered "yes" to Question No. 10, please provide the complete legal name, last known address and phone number of the person who surveyed the mines.

OBJECTION: Defendant objects to the above question as vague, ambiguous, assumes facts not in evidence, and calls for speculation.

12. Please produce any and all documents responsive to Questions Nos. 11 & 12.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. In addition, the question is over broad and unintelligible and fails to give witness fair notice of what information or documents are being requested and violates Tex. R. Civ. P. 208. Furthermore, Plaintiff's request violates Tex. R. Civ. P. 201 in that no subpoena duces tecum was attached to the deposition on written questions. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

13. Please produce any and all documents in your possession pertaining to Johnson & Johnson baby powder or talc products.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. Furthermore, the question is over broad and unintelligible and fails to give witness fair notice of what information or documents are being requested and violates the requisites of Tex. R. Civ. P. 208. Plaintiff's request violates Tex. R. Civ. P. 201 in that no subpoena duces tecum was attached to the deposition on written questions. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

Respectfully submitted,

MEHAFFY & WEBER

Attorneys for Johnson & Johnson
Professional, Inc. and McNeil PPC, Inc. f/k/a
Johnson-Johnson Baby Products

By

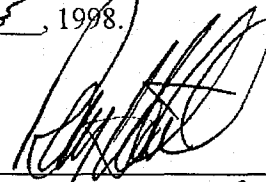


Gene M. Williams, Of Counsel
State Bar No. 21535300
Sandra F. Clark
State Bar No. 04294520

Post Office Box 16
Beaumont, Texas 77704
Telephone: 409/835-5011
Telecopier: 409/835-5729

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been
forwarded to all counsel of record on this the 10th day of June, 1998.



Gene M. Williams *M. Raymond Hatcher*

mw 506

CAUSE NO. D-157,746

DARLENE COKER, ET AL

VS.

BILL THAMES PHARMACY, INC.,
CORRIGAN ENTERPRISES, INC.
f/k/a JOHNSON-JOHNSON BABY f/k/a
S.W.S. PHARMACY INC., FERTITTAS
FINER FOODS, INC., GIANT FOOD
DISCOUNT CITY, INC., HENKE &
PILLOT, INC., HSTN. INC. f/k/a
J&J BABY PRODUCTS, JOHNSON &
JOHNSON PROFESSIONAL, LOVOI
AND SONS PHARMACIES, INC.,
MCNEIL PPC INC. PRODUCTS, THE
KROGER COMPANY

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

JOHN S. APPELMAN
DISTRICT CLERK

98 JUN 10 P 4:36

136TH JUDICIAL DISTRICT

**DEFENDANTS' OBJECTIONS TO PLAINTIFF'S DEPOSITION
ON WRITTEN QUESTIONS AND TO THE COMMISSION
OF NELL MCCALLUM & ASSOCIATES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Johnson & Johnson Consumer Companies, Inc., a Defendant in the above lawsuit, and files this its Objections to Depositions on Written Questions to McCrone Associates and to the Commission of Nell McCallum & Associates.

Defendant objects to the appointment of Nell McCallum & Associates by commission to take the deposition on written questions to McCrone Associates because she is not authorized under the Texas Rules of Civil Procedure. *See* Tex. R. Civ. P. 188. In addition, Defendant makes the following objections to the depositions on written questions:

3. If you answered "yes" to Questions No. 2, please provide the complete legal name, last known address, and phone number of the person who performed the analysis.

OBJECTION: Defendant objects to the above question as vague, ambiguous, assumes facts not in evidence, and calls for speculation.

4. If you answered "yes" to Question No. 2, please state if you found the presence or absence of asbestiform minerals.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. Furthermore, the question requires witness to speculate and provide an expert opinion that witness is not qualified to express. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

5. Please produce any and all documents responsive to Questions 2-4.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. In addition, the question is over broad and unintelligible and fails to give witness fair notice of what information or documents are being requested and violates Tex. R. Civ. P. 208. Furthermore, Plaintiff's request violates Tex. R. Civ. P. 201 in that no subpoena duces tecum was attached to the deposition on written questions. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

7. If you answered "yes" to Question No. 6, what were your findings regarding the fibrous and asbestiform material content?

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. Furthermore, the question requires witness to speculate and provide an expert opinion that witness is not qualified to express. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

8. If you answered "yes" to Question No. 6, please provide the complete legal name, last known address and phone number of the person who performed the analysis.

OBJECTION: Defendant objects to the above question as vague, ambiguous, assumes facts not in evidence, and calls for speculation.

9. Please produce any and all documents responsive to Question Nos. 6-8.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. In addition, the question is over broad and unintelligible and fails to give witness fair notice of what information or documents are being requested and violates Tex. R. Civ. P. 208. Furthermore, Plaintiff's request violates Tex. R. Civ. P. 201 in that no subpoena duces tecum was attached to the deposition on written questions. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

11. If you answered "yes" to Question No. 10, please provide the complete legal name, last known address and phone number of the person who surveyed the mines.

OBJECTION: Defendant objects to the above question as vague, ambiguous, assumes facts not in evidence, and calls for speculation.

12. Please produce any and all documents responsive to Questions Nos. 11 & 12.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. In addition, the question is over broad and unintelligible and fails to give witness fair notice of what information or documents are being requested and violates Tex. R. Civ. P. 208. Furthermore, Plaintiff's request violates Tex. R. Civ. P. 201 in that no subpoena duces tecum was attached to the deposition on written questions. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

13. Please produce any and all documents in your possession pertaining to Johnson & Johnson baby powder or talc products.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. Furthermore, the question is over broad and unintelligible and fails to give witness fair notice of what information or documents are being requested and violates the requisites of Tex. R. Civ. P. 208. Plaintiff's request violates Tex. R. Civ. P. 201 in that no subpoena duces tecum was attached to the deposition on written questions. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

Respectfully submitted,

MEHAFFY & WEBER

Attorneys for Johnson & Johnson
Professional, Inc. and McNeil PPC, Inc. f/k/a
Johnson-Johnson Baby Products

By

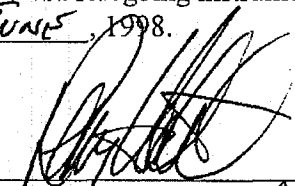


Gene M. Williams, Of Counsel
State Bar No. 21535300
Sandra F. Clark
State Bar No. 04294520

Post Office Box 16
Beaumont, Texas 77704
Telephone: 409/835-5011
Telecopier: 409/835-5729

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been
forwarded to all counsel of record on this the 10th day of JUNE, 1998.



Gene M. Williams N. Raymond Hatcher

mw
GO

CAUSE NO. D-157,746

DARLENE COKER, ET AL

VS.

BILL THAMES PHARMACY, INC.,
CORRIGAN ENTERPRISES, INC.
f/k/a JOHNSON-JOHNSON BABY f/k/a
S.W.S. PHARMACY INC., FERTITTAS
FINER FOODS, INC., GIANT FOOD
DISCOUNT CITY, INC., HENKE &
PILLOT, INC., HSTN. INC. f/k/a
J&J BABY PRODUCTS, JOHNSON &
JOHNSON PROFESSIONAL, LOVOI
AND SONS PHARMACIES, INC.,
MCNEIL PPC INC. PRODUCTS, THE
KROGER COMPANY

IN THE DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

JOHN S. APPELMAN
DISTRICT CLERK

98 JUN 10 P 4:36

FILED
DISTRICT CLERK
JEFFERSON COUNTY, TEXAS

136TH JUDICIAL DISTRICT

**DEFENDANTS' OBJECTIONS TO PLAINTIFF'S DEPOSITION
ON WRITTEN QUESTIONS AND TO THE COMMISSION
OF NELL MCCALLUM & ASSOCIATES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Johnson & Johnson Consumer Companies, Inc., a Defendant in the above lawsuit, and files this its Objections to Depositions on Written Questions to Colorado School of Mines Research Institute and to the Commission of Nell McCallum & Associates.

Defendant objects to the appointment of Nell McCallum & Associates by commission to take the deposition on written questions to Colorado School of Mines Research Institute because she is not authorized under the Texas Rules of Civil Procedure. *See* Tex. R. Civ. P. 188. In addition, Defendant makes the following objections to the depositions on written questions:

3. If you answered "yes" to Questions No. 2, please provide the complete legal name, last known address, and phone number of the person who performed the analysis.

OBJECTION: Defendant objects to the above question as vague, ambiguous, assumes facts not in evidence, and calls for speculation.

4. If you answered "yes" to Question No. 2, please state if you found the presence or absence of asbestiform minerals.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. Furthermore, the question requires witness to speculate and provide an expert opinion that witness is not qualified to express. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

5. Please produce any and all documents responsive to Questions 2-4.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. In addition, the question is over broad and unintelligible and fails to give witness fair notice of what information or documents are being requested and violates Tex. R. Civ. P. 208. Furthermore, Plaintiff's request violates Tex. R. Civ. P. 201 in that no subpoena duces tecum was attached to the deposition on written questions. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

7. If you answered "yes" to Question No. 6, what were your findings regarding the fibrous and asbestiform material content?

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. Furthermore, the question requires witness to speculate and provide an expert opinion that witness is not qualified to express. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

8. If you answered "yes" to Question No. 6, please provide the complete legal name, last known address and phone number of the person who performed the analysis.

OBJECTION: Defendant objects to the above question as vague, ambiguous, assumes facts not in evidence, and calls for speculation.

9. Please produce any and all documents responsive to Question Nos. 6-8.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. In addition, the question is over broad and unintelligible and fails to give witness fair notice of what information or documents are being requested and violates Tex. R. Civ. P. 208. Furthermore, Plaintiff's request violates Tex. R. Civ. P. 201 in that no subpoena duces tecum was attached to the deposition on written questions. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

11. If you answered "yes" to Question No. 10, please provide the complete legal name, last known address and phone number of the person who surveyed the mines.

OBJECTION: Defendant objects to the above question as vague, ambiguous, assumes facts not in evidence, and calls for speculation.

12. Please produce any and all documents responsive to Questions Nos. 11 & 12.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. In addition, the question is over broad and unintelligible and fails to give witness fair notice of what information or documents are being requested and violates Tex. R. Civ. P. 208. Furthermore, Plaintiff's request violates Tex. R. Civ. P. 201 in that no subpoena duces tecum was attached to the deposition on written questions. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.


13. Please produce any and all documents in your possession pertaining to Johnson & Johnson baby powder or talc products.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. Furthermore, the question is over broad and unintelligible and fails to give witness fair notice of what information or documents are being requested and violates the requisites of Tex. R. Civ. P. 208. Plaintiff's request violates Tex. R. Civ. P. 201 in that no subpoena duces tecum was attached to the deposition on written questions. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

Respectfully submitted,

MEHAFFY & WEBER

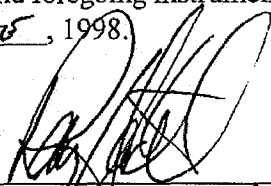
Attorneys for Johnson & Johnson
Professional, Inc. and McNeil PPC, Inc. f/k/a
Johnson-Johnson Baby Products

By 
Gene M. Williams, Of Counsel
State Bar No. 21535300
Sandra F. Clark
State Bar No. 04294520

Post Office Box 16
Beaumont, Texas 77704
Telephone: 409/835-5011
Telecopier: 409/835-5729

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been
forwarded to all counsel of record on this the 10th day of June, 1998.


Gene M. Williams M. Raymond Hatcher

mw
JB

CAUSE NO. D-157,746

DARLENE COKER, ET AL

VS.

BILL THAMES PHARMACY, INC.,
CORRIGAN ENTERPRISES, INC.
f/k/a JOHNSON-JOHNSON BABY f/k/a
S.W.S. PHARMACY INC., FERTITTAS
FINER FOODS, INC., GIANT FOOD
DISCOUNT CITY, INC., HENKE &
PILLOT, INC., HSTN. INC. f/k/a
J&J BABY PRODUCTS, JOHNSON &
JOHNSON PROFESSIONAL, LOVOI
AND SONS PHARMACIES, INC.,
MCNEIL PPC INC. PRODUCTS, THE
KROGER COMPANY

IN THE DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

JOHN S. APPELHART
DISTRICT CLERK

98 JUN 10 P 4:36

FILED
JUN 10 2016
JEFFERSON COUNTY, TEXAS

136TH JUDICIAL DISTRICT

**DEFENDANTS' OBJECTIONS TO PLAINTIFF'S DEPOSITION
ON WRITTEN QUESTIONS AND TO THE COMMISSION
OF NELL MCCALLUM & ASSOCIATES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Johnson & Johnson Consumer Companies, Inc., a Defendant in the above lawsuit, and files this its Objections to Depositions on Written Questions to Laurie R. Bain, McCrone Environmental Services Inc., and to the Commission of Nell McCallum & Associates.

Defendant objects to the appointment of Nell McCallum & Associates by commission to take the deposition on written questions to Laurie R. Bain, McCrone Environmental Services Inc., because she is not authorized under the Texas Rules of Civil Procedure. *See* Tex. R. Civ. P. 188. In addition, Defendant makes the following objections to the depositions on written questions:

3. If you answered "yes" to Questions No. 2, please provide the complete legal name, last known address, and phone number of the person who performed the analysis.

OBJECTION: Defendant objects to the above question as vague, ambiguous, assumes facts not in evidence, and calls for speculation.

4. If you answered "yes" to Question No. 2, please state if you found the presence or absence of asbestiform minerals.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. Furthermore, the question requires witness to speculate and provide an expert opinion that witness is not qualified to express. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

5. Please produce any and all documents responsive to Questions 2-4.

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. In addition, the question is over broad and unintelligible and fails to give witness fair notice of what information or documents are being requested and violates Tex. R. Civ. P. 208. Furthermore, Plaintiff's request violates Tex. R. Civ. P. 201 in that no subpoena duces tecum was attached to the deposition on written questions. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.


7. If you answered "yes" to Question No. 6, what were your findings regarding the fibrous and asbestiform material content?

OBJECTION: Defendant objects to the above question as vague, ambiguous, and assumes facts not in evidence. Furthermore, the question requires witness to speculate and provide an expert opinion that witness is not qualified to express. Finally, the information requested from the witness is subject to proprietary and trade secret privileges of Defendant.

Respectfully submitted,

MEHAFFY & WEBER

Attorneys for Johnson & Johnson
Professional, Inc. and McNeil PPC, Inc. f/k/a
Johnson-Johnson Baby Products

By 
Gene M. Williams, Of Counsel
State Bar No. 21535300
Sandra F. Clark
State Bar No. 04294520

Post Office Box 16
Beaumont, Texas 77704
Telephone: 409/835-5011
Telecopier: 409/835-5729

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been
forwarded to all counsel of record on this the 10th day of JUNE, 1998.


Gene M. Williams M. Raymond Hatcher

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

June 11, 1998

Via Hand-Delivery

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

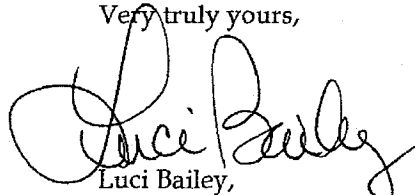
Dear Mr. Appleman:

Enclosed for filing in the above-referenced case, please find Plaintiffs' Objections to
Defendant, Johnson & Johnson Consumer Company, Inc.'s, Notice of Oral Deposition with
Subpoena Duces Tecum.

All counsel of record are being furnished a copy of same.

Thank you for your attention in this regard.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/db

Enclosure

cc: Mr. Roger Worthington
Mr. Gene Williams

JOHN S. APPLEMAN
DISTRICT CLERK

98 JUN 12 P4:26

JEFFERSON COUNTY, TEXAS
DISTRICT COURT OF
FILED

CAUSE NO. D-157,746

DARLENE COKER, and spouse, § IN THE DISTRICT COURT OF
ROY COKER §
§
vs. § JEFFERSON COUNTY, TEXAS
§
BILL THAMES PHARMACY, INC., ET AL § 136TH JUDICIAL DISTRICT

**PLAINTIFFS' OBJECTIONS TO DEFENDANT,
JOHNSON & JOHNSON CONSUMER COMPANY, INC.'s
NOTICE OF ORAL DEPOSITION WITH SUBPOENA DUCES TECUM**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Plaintiffs and file these objections to Defendant, Johnson & Johnson Consumer Company, Inc.'s Notice of Oral Deposition with Subpoena Duces Tecum, and in support thereof would respectfully show unto the Court as follows:

Defendant has noticed the deposition of Plaintiffs' retained expert, Dr. Jerrold Abraham for Saturday, June 20, 1998. Attached to Defendant's Notice of Oral Deposition is a Subpoena Duces Tecum, a copy of which is attached to this motion as Exhibit A. Pursuant to the Texas Rules of Civil Procedure, several items on the subpoena are objectionable. Accordingly, Plaintiffs lodge the following objections to aspects of the subpoena:

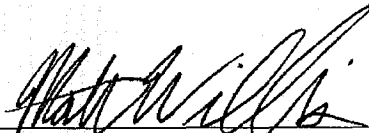
- (6) Objection. Overbroad and outside the scope of discovery pursuant to the Texas Rules of Civil Procedure. In addition, the request violates the consulting expert privilege. Moreover, the request is not relevant, nor reasonably calculated to lead to the discovery of relevant, admissible evidence.
- (8) Objection. This request goes beyond the scope of the Texas Rules of Civil Procedure in asking the witness to reduce opinions to tangible form without a Court order.
- (10) Objection. This request seeks to have the witness create a document which is not required by the Texas Rules of Civil Procedure. Furthermore, the rules only require that material reviewed by testifying expert become discoverable and not necessarily the name and address of any consulting expert who authored material reviewed by a testifying expert.
- (11) Objection. Outside the scope of the Texas Rules of Civil Procedure. In addition, this request seeks to violate the consulting expert privilege and the attorney work product privilege.
- (14) Objection. Over broad and outside the scope of the Texas Rules of Civil Procedure. Plaintiffs' experts are not required to conduct research for the defendant.

- (15) Objection. This request is anticipatory and, therefore, not proper. Subject to and without waiving this objection, Plaintiffs will produce any of the requested documents authored or formulated by the witness which are currently in existence.
- (18) Objection. Over broad and outside the scope of the Texas Rules of Civil Procedure. In addition, this request is not relevant, nor reasonably calculated to lead to the discovery of relevant, admissible evidence. This request is meant purely to harass and is improper.
- (19) Objection. Over broad and outside the scope of the Texas Rules of Civil Procedure. Plaintiffs' witnesses are not required to create documents for the defendant.
- (20) Objection. Over broad, unduly burdensome and outside the scope of the Texas Rules of Civil Procedure.

The Law Offices Of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701
Ph. #: (409) 838-6410
Fax #: (409) 838-6084

Respectfully submitted,

By:



Matthew R. Willis
TBA# 21648600

ATTORNEY FOR PLAINTIFF

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing instrument has been duly forwarded to all counsel of record on this 11TH day of June, 1998.


Matthew R. Willis

JOHN S. APPELMAN
DISTRICT CLERK

98 JUN 12 P4:27

NO. D-157,746

DARLENE COKER, AND SPOUSE ROY COKER

VS.

BILL THAMES PHARMACY INC.,
CORRIGAN ENTERPRISES, INC. f/k/a
JOHNSON-JOHNSON BABY f/k/a
S.W.S. PHARMACY INC., FERTITTAS
FINER FOODS, INC., GIANT FOOD
DISCOUNT CITY, INC., HENKE &
PILLOT, INC., HSTN. INC. f/k/a J&J
BABY PRODUCTS, JOHNSON &
JOHNSON PROFESSIONAL, LOVOI
AND SONS PHARMACIES, INC.,
MCNEIL PPC INC. PRODUCTS, THE
KROGER COMPANY

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

136TH DISTRICT COURT

FILED
DISTRICT COURT NO.
FREDERICK COUNTY
98 DEC -1 P 3:39
JOHN S. APPELTON
DISTRICT CLERK
NTY TEXAS

MOTION TO QUASH

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Johnson & Johnson Consumer Companies, Inc. and files this its Motion to Quash a notice of deposition issued by the plaintiffs showing unto the Court as follows:

I.

On November 24, 1998, the plaintiffs issued a deposition notice for a Johnson & Johnson employee knowledgeable about whether or not it is possible to ascertain if a metal can has been sealed or opened. (See attached Exhibit A). This deposition was noticed for December 3, 1998.

II.

This notice of deposition is inappropriate and subject to a motion to quash. On October 1, 1998, the Court held a hearing on Defendant's Motion for Summary Judgment. At the conclusion of that hearing, the Court allowed the plaintiffs a continuance of the hearing granting the plaintiffs

until December 31, 1998 to respond to Defendant's Motion for Summary Judgment. Further, the Court specifically ordered in that hearing that "the plaintiff may not engage in additional discovery, either documentary or deposition as to the defendant during the pendency of this continuance." (See attached Exhibit B). Therefore, plaintiffs' November 23, 1998 Notice of Oral Deposition violates the Court's preexisting order.

III.

Further, defendant cannot comply with the scope of the notice. The plaintiffs seem to attempt to modify the burden of proof in requesting the defendant to propose a witness to give some apparent "chain of custody" testimony relative to cans of baby powder without reference to the specific age of the cans, the location of the cans or the chain of custody of those cans. Further, the plaintiffs seem to request someone to give an opinion as to whether or not such cans are sealed or in their original condition.

IV.

Chain of custody issues and other evidentiary issues are a burden of plaintiff in a products liability case such as this. It would be inappropriate to allow the plaintiffs to effectively modify the burden of proof such as is requested.

WHEREFORE, PREMISES CONSIDERED, defendant prays that the Court in all things quash the plaintiffs' November 23, 1998 Notice of Oral Deposition.

Respectfully submitted,

MEHAFFY & WEBER, P.C.
Attorneys for Johnson & Johnson Consumer
Companies, Inc.

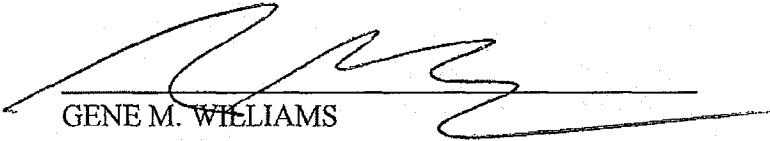
By: 

Gene M. Williams, Of Counsel
State Bar No. 21535300

Post Office Box 16
Beaumont, Texas 77704
Telephone: (409) 835-5011
Telecopier: (409) 835-5177

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been
forwarded to all counsel of record on this the 1st day of March, 1998.


GENE M. WILLIAMS

11/24/98 16:17

409 838 6084

HERSCHEL HOBSON →→→ MEH WEB

003/004

CAUSE NO. D-157,746

DARLENE COKER, and spouse, § IN THE DISTRICT COURT OF
ROY COKER §
vs. § JEFFERSON COUNTY, TEXAS
BILL THAMES PHARMACY, INC., ET AL § 136TH JUDICIAL DISTRICT

PLAINTIFFS' 11/23/98 NOTICE OF ORAL DEPOSITION

TO: Defendant, JOHNSON & JOHNSON PROFESSIONAL INC., by and through its attorney of record: Mr. Gene Williams, Mehaffy & Weber, PO Box 16, Beaumont, TX 77704.

PLEASE TAKE NOTICE that the Plaintiffs in the above-referenced cause of action will take the oral/video deposition of the person named below at the time and place designated in this notice pursuant to the Texas Rules of Civil Procedure.

WITNESS: Person(s) knowledgeable of the age of Johnson & Johnson Baby Powder metal cans and/or whether or not Johnson & Johnson Baby Powder metal cans were or were not sealed and/or whether or not it is possible to ascertain if a metal can has been opened.

DATE: December 3, 1998, continuing from day to day until completed -

TIME: 10:00 a.m.

PLACE: Mehaffy & Weber
2615 Calder
Beaumont, TX 77704

COURT REPORTER: Irene Meguess
Neil McCallum & Associates, Inc.
2615 Calder, Suite 111
Beaumont, TX 77702

You are invited to appear and cross-examine the witness.

Respectfully submitted,

The Law Offices Of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701
Ph. #: (409) 838-6410
Fax #: (409) 838-6084

By:

Herschel L. Hobson
TBA# 09744600

ATTORNEY FOR PLAINTIFFS



11/24/98

16:17

409 838 6084

HERSCHEL HOBSON →→→ MEH WEB

004/004

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing instrument
has been duly forwarded to all counsel of record on this 24th day of November, 1998.



Herschel L. Hobson

00/00 MON 12:43 FAX 110 000 0222
05/88 MON 10:57 FAX 1 409 835 5177

MEHAFFY & WEBER
MEHAFFY & WEBER

--- M & W BEAUMONT 1 0002
0002

10/02/88 15:33 408 838 6084

HERSCHEL HOBSON --- MEH WEB 0002/003

10/01/88 13:18 To: Herschel Hobson

From: Gene H. Williams

408221871

Page 2/4

0157746
NO. 0157746

DARLENE COKER, AND SPOUSE ROY
COKER

VS.

HILL, THAMPS PHARMACY INC.,
CORRIGAN ENTERPRISES, INC. I/K/A
JOHNSON-JOHNSON BABY I/K/A S.W.S.
PHARMACY INC. FERTITAS FINE
FOODS, INC., GIANT FOOD DISCOUNT
CITY, INC., HENK & PILOT, INC.,
HSTN. INC. I/K/A J&J BABY PRODUCTS,
JOHNSON & JOHNSON
PROFESSIONAL, LOVOI AND SONS
PHARMACIES, INC., MCNEIL PPC INC.
PHARMACIES, THE KIRCHER COMPANY

IN THE DISTRICT COURT OF

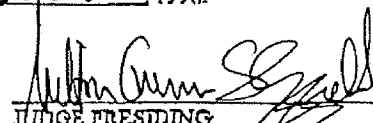
JEFFERSON COUNTY, TEXAS

136TH DISTRICT COURT

ORDER

CAME ON TO BE HEARD on October 1, 1998 the Motion for Summary Judgment by the defendant Johnson & Johnson Consumer Companies, Inc. and the Motion for Continuance of the plaintiff. After hearing argument of counsel and reviewing the papers, the Court finds that the Motion for Continuance shall be granted in that the plaintiff has until December 31, 1998 to file her final and full response to defendant's Motion for Summary Judgment. No other supplemental motions or responses shall be allowed after that date absent further orders of the Court. Further, the Court finds that the plaintiff may not engage in additional discovery, either documentary or deposition as to the defendant during the pendency of this continuance.

SIGNED this the 7th day of October 1998.


JUDGE PRESIDING

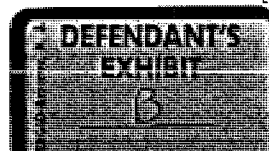
APPROVED AS TO FORM AND CONTENT:

MW/19980

FILED
at 10:45 o'clock A M.

OCT 08 1998

JOHN A. APPERMAN
CLERK, DISTRICT COURT, JEFFERSON CO., TEXAS
DEPUTY



05/98 MON 12:25 FAX 713 855 0222
05/98 MON 10:57 FAX 1 408 835 5177

MEHAFFY & WEBER
MEHAFFY & WEBER

→→→ M & W BEAUMONT 1 0003
0003

10/02/98 15:33 408 835 8054

HERSCHEL HOBSON →→→ WEB WEB

003/003

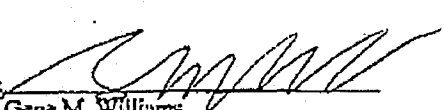
10/01/98 10:10 To: Herschel Hobson

From: Gena M. Williams

4089324571

Page 4/6

MEHAFFY & WEBER P.C.
Attorneys for Johnson & Johnson Consumer Companies, Inc.

By: 
Gena M. Williams

THE LAW OFFICES OF HERSCHEL L. HOBSON
Attorneys for Plaintiffs

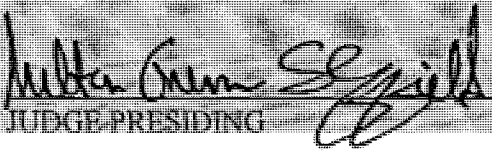
By:  *by permission*
Herschel L. Hobson

NO. D-157,746

DARLENE COKER, AND SPOUSE ROY COKER § IN THE DISTRICT COURT OF
§
§
VS. §
§
§
BILL THAMES PHARMACY INC., §
CORRIGAN ENTERPRISES, INC. f/k/a §
JOHNSON-JOHNSON BABY f/k/a § JEFFERSON COUNTY, TEXAS
S.W.S. PHARMACY INC., FERTITTAS §
FINER FOODS, INC., GIANT FOOD §
DISCOUNT CITY, INC., HENKE & §
PILLOT, INC., HSTN. INC. f/k/a J&J §
BABY PRODUCTS, JOHNSON & §
JOHNSON PROFESSIONAL, LOVOI §
AND SONS PHARMACIES, INC., §
MCNEIL PPC INC. PRODUCTS, THE §
KROGER COMPANY § 136TH DISTRICT COURT

ORDER

ON THIS DAY there came on to be heard Defendant's Motion to Quash and the Court, having considered the motion, is of the opinion that it is well taken and should be GRANTED. It is, therefore,

ORDERED, ADJUDGED and DECREED that Defendant's Motion to Quash is in all things GRANTED.
SIGNED this the 4th day of December, 1998.

JUDGE PRESIDING

FILED
at 8:30 o'clock A M.

DEC 04 1998

MW/146826

JOHN G. APPLEMAN
CLERK OF DISTRICT COURT, JEFFERSON CO., TEXAS
BY  DEPUTY

PHILLIPS & AKERS

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

3400 PHOENIX TOWER

3200 SOUTHWEST FREEWAY

HOUSTON, TEXAS 77027

(713) 552-9595

FAX (713) 877-2531

BROCK C. AKERS

BOARD CERTIFIED PERSONAL INJURY
AND CIVIL TRIAL LAW

TEXAS BOARD OF LEGAL SPECIALIZATION

BOARD CERTIFIED CIVIL TRIAL ADVOCATE

BY THE NATIONAL BOARD OF TRIAL ADVOCACY

DIRECT DIAL

(713) 552-0232

E-MAIL

Brock_Akers@panda-law.com

October 16, 1997

VIA FEDERAL EXPRESS

John S. Appleman, District Clerk
Jefferson County Courthouse
P.O. Box 3707
Beaumont, Texas 77704-3707

RE: No. D157746; Darlene Coker and spouse, Roy Coker v. Bill Thames Pharmacy, Inc.,
et al; In the 136th Judicial District Court of Jefferson County, Texas

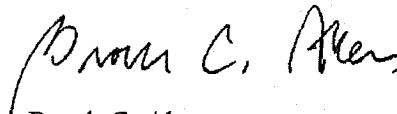
Dear Mr. Appleman:

Enclosed for filing among the papers of the above-entitled and numbered cause is Defendants' Original Answer and Defendants' Application and Demand for Trial by Jury, together with our firm's check in the amount of \$30.00 for jury fee. Please date and file stamp the extra copy of this letter and return in the envelope provided.

By copy of this letter, a copy of said documents have been forwarded to all counsel of record.

Thank you for your assistance.

Sincerely,



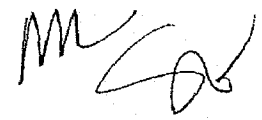
Brock C. Akers

BCA:pdg
7715.069

Enclosure(s)

cc: Herschel L. Hobson
The Law Offices of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701
(Attorney for Plaintiffs)
CM-RRR #P 241 211 858

Joseph C. Blanks
P. O. Box 3172
Beaumont, Texas 77704
(Attorney for Plaintiffs)
CM-RRR #P 241 211 860



NO. D157746

DARLENE COKER, and spouse
ROY COKER

IN THE DISTRICT COURT OF

-VS-

BILL THAMES PHARMACY INC.,
CORRIGAN ENTERPRISES, INC.
f/k/a JOHNSON-JOHNSON BABY
f/k/a S.W.S. PHARMACY INC.
FERTITTAS FINER FOODS, INC.
GIANT FOOD DISCOUNT CITY, INC.
HENKE & PILLOT, INC. HSTN. INC.
f/k/a J&J BABY PRODUCTS
JOHNSON & JOHNSON PROFESSIONAL
LOVOI AND SONS PHARMACIES, INC.
MCNEIL PPC INC.
Products
THE KROGER COMPANY

JEFFERSON COUNTY, TEXAS

FILED
DISTRICT COURT
JEFFERSON COUNTY, TEXAS
OCT 17 09:38
136TH JUDICIAL DISTRICT

DEFENDANTS' ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendants, THE KROGER CO. and HENKE & PILLOT, INC. HOUSTON., in the above-styled and numbered cause and files this their Original Answer and would show unto the Court the following:

I.

Subject to such stipulations and admissions as may hereafter be made, these Defendants assert a general denial as is authorized by Rule 92 of the Texas Rules of Civil Procedure, and Defendants respectfully request that Plaintiffs be required to prove the charges and allegations against these Defendant by a preponderance of the evidence as is required by the constitution and laws of the State of Texas.

II.

Defendants formally make demand and application for a jury trial.

III.

That Defendants respectfully reserves the right at this time to amend this original answer to the Plaintiffs' allegations after said Defendants have had the opportunity to more closely investigate these claims, as is the right and privilege of said Defendants under the Rules of Civil Procedure and the laws of the State of Texas.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that Plaintiffs take nothing by reason of this suit, that Defendants go hence without day, for costs, and for general relief.

Respectfully submitted,

PHILLIPS & AKERS

By:



Brock C. Akers

State Bar No. 00953250

3200 Phoenix Tower

3200 Southwest Freeway

Houston, Texas 77027

(713) 552-9595

FAX #(713) 552-0231

ATTORNEY FOR DEFENDANTS,

THE KROGER CO. and HENKE & PILLOT,
INC. HOUSTON

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Defendants' Original Answer has been served in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure on this 16th day of October, 1997.



Brock C. Akers

SB

NO. D157746

DARLENE COKER, and spouse
ROY COKER

-VS-

BILL THAMES PHARMACY INC.,
CORRIGAN ENTERPRISES, INC.
f/k/a JOHNSON-JOHNSON BABY
f/k/a S.W.S. PHARMACY INC.
FERTITTAS FINER FOODS, INC.
GIANT FOOD DISCOUNT CITY, INC.
HENKE & PILLOT, INC. HSTN. INC.
f/k/a J&J BABY PRODUCTS
JOHNSON & JOHNSON PROFESSIONAL
LOVOI AND SONS PHARMACIES, INC.
MCNEIL PPC INC.
Products
THE KROGER COMPANY

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

136TH JUDICIAL DISTRICT

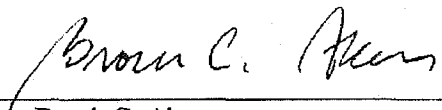
APPLICATION AND DEMAND FOR TRIAL BY JURY

Demand for trial by jury is hereby made by Defendants, THE KROGER CO. and HENKE & PILLOT, INC. HOUSTON, and the necessary fee accompanies this request.

Respectfully submitted,

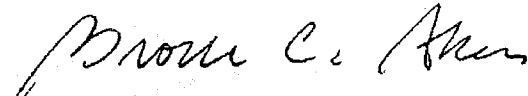
PHILLIPS & AKERS

BY:


Brock C. Akers
SBOT #: 00953250
3200 Phoenix Tower
3200 Southwest Freeway
Houston, Texas 77027
Telephone #(713) 552-9595
ATTORNEY FOR DEFENDANTS,
THE KROGER CO. and HENKE & PILLOT,
INC. HOUSTON

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Defendants' Application and Demand for Trial by Jury has been served in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure on this 16th day of October, 1997.



Brock C. Akers

J. CARLISLE DEHAY, JR.
(1922 - 1991)

GARY D. ELLISTON
DAVID W. CROWE
MEL D. BAILEY
ERIC D. WEWERS
CHRISTOPHER P. MANNING
PAUL E. HAMILTON
KATHRYN HERMES
W. SCOTT BERRY

DEHAY & ELLISTON, L.L.P.

ATTORNEYS AND COUNSELORS
3500 NATIONSBANK PLAZA
901 MAIN STREET
DALLAS, TEXAS 75202-3736
(214) 210-2400
FACSIMILE (214) 210-2500

215 ORLEANS ST.
BEAUMONT, TEXAS 77701
(409) 833-0900
FACSIMILE (409) 833-0964

JILL G. ADAMS
KIRSTEN C. ALESSIO
JOHN W. ARNOLD
WILLIAM C. ARNOLD
STUART G. BROOKS
SUSAN CHAPMAN
RUSSELL J. DEPALMA
BRENT M. KARREN
LAURA E. KUGLER
ANTHONY S. MILLER
C. THOMAS MULLIGAN
LILY C. MYERS
AMY E. NETTLE
TODD D. OGDEN
REX RAMOS
TODD H. RAMSEY
H. TRACY RICHARDSON, III
DAVID L. RED
KYLE C. STEELE
TODD J. SUDDLESON
STEVEN RAY THOMAS
TANDY V. WELBORN

WRITER'S DIRECT DIAL
(214) 210-2404

October 31, 1997

Via Certified Mail

136th District Court
Jefferson County
1001 Pearl St.
Beaumont, Texas 77701

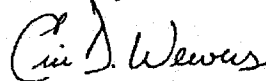
Re: Darlene Coker, and spouse Roy Coker vs. Bill Thames Pharmacy, Inc., et al;
Cause No. D157746

Dear Clerk:

Enclosed for filing please find Defendant Giant Food Discount City, Inc.'s Motion to Transfer Venue and, Subject Thereto, Special Exceptions and Original Answer. Please return a file-marked copy for my records.

Thank you for your assistance in this matter. If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,



Eric Wewers

EW/rc
Enclosure
cc: Mr. Herschell L. Hobson (via certified mail)

CAUSE NO. D157746

DARLENE COKER, and spouse
ROY COKER

VS.

BILL THAMES PHARMACY INC.,
CORRIGAN ENTERPRISES, INC.

f/k/a Johnson-Johnson Baby

f/k/a S.W.S. Pharmacy Inc.

FERITTITAS FINER FOODS, INC.

GIANT FOOD DISCOUNT CITY, INC.

HENKE & PILLOT, INC. HSTN.

Inc. f/k/a J&J Baby Products

JOHNSON & JOHNSON PROFESSIONAL

LOVOI AND SONS PHARMACIES, INC.

MCNEIL PPC INC.

Products

THE KROGER COMPANY

IN THE DISTRICT COURT

JEFFERSON COUNTY, TEXAS

FILED

at _____ o'clock _____ M.

NOV 03 1997

JOHN S. APPLEMAN
CLERK, DISTRICT COURT OF JEFFERSON CO., TEXAS

BY _____ DEPUTY

136TH DISTRICT COURT

DEFENDANT GIANT FOOD DISCOUNT CITY, INC.'S
MOTION TO TRANSFER VENUE AND, SUBJECT THERETO,
SPECIAL EXCEPTIONS AND ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, GIANT FOOD DISCOUNT CITY, INC., a Defendant in the above-styled and numbered cause (hereinafter referred to as "Defendant"), and makes and files this its Motion to Transfer Venue and, Subject Thereto, Special Exceptions and Original Answer to Plaintiffs' Original Petition and would respectfully show the Court and jury, which it hereby demands, the following:

I. RULE 86 MOTION TO TRANSFER VENUE

Defendant, not a natural person, objects to venue in Jefferson County, Texas on the ground that, pursuant to Tex.R.Civ.P.86 and V.T.C.A. Civil Practice and Remedies Code §15.001 *et.*

seq., Jefferson County is not the proper venue for this lawsuit. Defendant requests a transfer of this lawsuit to Harris County, Texas, the location of its principal office. *See* Tex. Civ. Pract. & Rem. Code §15.002(a)(3).

Paragraph 2 of Plaintiffs' Original Petition contains their only venue allegation: "[v]enue is proper because a significant and substantial amount of the bad acts complained of occurred in Jefferson County." To the extent this venue allegation comports with Tex. Civ. Pract. & Rem. Code § 15.002(a)(1), Defendant specifically denies same to require Plaintiffs to make a prima facie case that venue is proper in Jefferson County, Texas.

Furthermore, because this is a multi-defendant case, Plaintiffs must adhere to the requirements of V.T.C.A. Civil Practice and Remedies Code §15.005. Under this statute, in order to maintain venue against Defendant, plaintiffs must first properly establish venue against at least one other defendant ("venue defendant"), then prove that the injuries allegedly caused by Defendant arose from the "same transaction, occurrence, or series of transactions or occurrences" as those allegedly caused by the venue defendant. Plaintiffs' Original Petition is devoid of any allegations against Defendant tending to support §15.005 multi-defendant venue. To the extent such allegations may be included in Plaintiffs' Original Petition, they are specifically denied to require Plaintiff to make a prima facie case that multi-defendant venue against Defendant is proper in Jefferson County, Texas.

In view of the foregoing, Plaintiffs have failed to establish its case against Defendant may be maintained in Jefferson County, Texas. Accordingly, venue should be transferred to Harris County, Texas, the location of Defendant's principal office. *See* Tex. Civ. Pract. & Rem. Code §15.002(a)(3).

II. SPECIAL EXCEPTIONS

1) Defendant specially excepts to Plaintiffs' venue allegation as set forth in paragraph 2 of their Original Petition as such allegations are vague and do not adequately inform Defendant of whether it may be subject to suit in Jefferson County, Texas under either Tex. Civ. Pract. & Rem. Code §15.002(a)(1) or §15.005.

2) Defendant specially excepts to Plaintiffs' use of the terms "talc", "talc products", "poisonous talc", and "airborne talc components" in paragraphs 4, 5, and 6 of Plaintiff's Original Petition. Such terms fail to provide adequate notice regarding which of Defendant's products, if any, allegedly caused Plaintiffs' damages.

III. ORIGINAL ANSWER

1) Pursuant to Tex.R.Civ. P. 92, Defendant generally denies each and every, all and singular, the material allegations contained in Plaintiffs' Original Petition and demands strict proof thereof.

2) Plaintiffs' Petition fails to state a cause of action upon which relief can be granted.

3) Defendant objects to the Court's exercise of subject matter jurisdiction over the cause of action alleged by Plaintiffs. Furthermore, Plaintiffs' filing of this case violates the Texas Forum Non Conveniens statute, Texas Civil Practice and Remedies Code § 71.052.

4) Defendant denies that Plaintiffs and/or Plaintiffs' decedent sustained injuries as a result of contact with or use of any product for which this Defendant is responsible.

5) Plaintiffs are barred from recovery herein by the applicable statutes of limitations and/or statutes of repose.

6) Plaintiffs are barred from recovery herein by the doctrine of laches.

7) Plaintiffs are barred from recovery herein by the doctrine of assumption of risk (volenti non fit injuria).

8) Plaintiffs are barred from recovery herein by the doctrine of misuse or improper use which proximately caused or proximately contributed to cause the injuries about which Plaintiffs complain herein.

9) Plaintiffs are barred from recovery herein by the doctrines of comparative negligence, contributory negligence, comparative responsibility and/or comparative causation.

10) Defendant alleges that any exposure which Plaintiff might have had to any products for which this Defendant is responsible was "de minimus" and thus not the cause of the injuries about which Plaintiff complains of herein.

11) Defendant alleges that any injuries and damages alleged by Plaintiffs were solely caused by the acts and omissions of others over whom this Defendant had no supervision or control, and there was no damage from the conduct of this Defendant and no substantial damages by any other Defendant.

12) Defendant alleges that Plaintiffs and/or Plaintiffs' employers had knowledge of the products used and the risks incident thereto and therefore this Defendant breached no duty owing to them.

13) Defendant alleges that the situation about which Plaintiffs complain herein arose out of transitory conditions arising out of the very work of Plaintiffs and/or Plaintiffs' decedent and therefore this Defendant breached no duty and has no liability.

14) Defendant alleges that the condition about which Plaintiffs complain is due to causes other than exposure to products for which this Defendant is responsible.

15) Defendant alleges that Plaintiffs have no claim based upon allegations of strict liability arising from any alleged exposure to products for which this Defendant is responsible prior to June 6, 1967, because no cause of action existed in Texas based upon strict liability in tort for exposure to a product, since the Supreme Court of Texas in McKisson vs. Sales Affiliates, Inc., 416 S.W.2d 787, held that prior to 1967, it had refused to extend "strict liability" to any manufacturer other than the manufacturers and packagers of food products for human consumption, and the rule of 402A was adopted for the first time in June, 1967. The Supreme Court of Texas would not apply the rule of strict liability retroactively to cover exposures prior to June, 1967; therefore this Defendant pleads that no recovery can be had upon the theory of strict liability for exposures, if any, prior to June 6, 1967. Further, the application of strict liability on a retroactive basis would be violative of Article I, §16, of the Texas Constitution.

16) Defendant alleges that Plaintiffs have no claim based upon allegations of strict liability arising from any alleged exposure to any products for which this Defendant is responsible after June 6, 1967.

17) Defendant alleges that Plaintiffs' and/or Plaintiffs' decedent's injuries, if any, were pre-existing and/or not the result of any contact with any products for which this Defendant is responsible.

18) This Defendant alleges Plaintiffs' and/or Plaintiffs' decedent's injuries, if any, were caused in whole or in part by Plaintiffs' and/or Plaintiffs' decedent's history of smoking and failure to stop smoking and Plaintiffs and/or Plaintiffs' decedent were negligent and assumed any risks related to such smoking. Plaintiffs' claims, therefore, are barred by the doctrines of comparative fault, comparative responsibility, contributory negligence and/or comparative causation.

19) Defendant alleges that Plaintiffs' action against this Defendant for injuries sustained, if any, from exposure to any products for which this Defendant is responsible while employed by this Defendant is barred by the exclusive remedy provision of the Workers Compensation Act.

20) Defendant adopts by reference each defense not hereinabove alleged, if any, that may be alleged in any pleading by any other Defendant or Third-Party Defendant in this action, heretofore or hereafter filed.

21) Defendant alleges that it is entitled to indemnity and/or contribution from each of the other Defendants and/or a credit or pro rata reduction for any amounts paid by settling Defendants pursuant to Chapter 32 and Chapter 33 of the Texas Civil Practice and Remedies Code, and/or the doctrine of comparative fault.

22) Defendant alleges that Plaintiffs' damages, if any, were caused by negligent acts or omissions or breach of warranty of third parties or other Defendants and/or exposure to certain products manufactured or distributed by said third parties or Defendants, and, under the Supreme Court of Texas opinion in Duncan v. Cessna Aircraft Company II, this Defendant is entitled to a comparative apportionment of fault, if any, as to the other Defendants and Cross-Defendants and/or third parties and is entitled to a judgment against them herein for contribution and/or indemnity or a percentage reduction in accordance with the apportionment of fault.

23) Defendant is not liable to Plaintiffs because the products to which Plaintiffs and/or Plaintiffs' decedent were allegedly exposed were supplied in accordance with specifications and/or regulations of the United States Government and Defendant claims the benefit of the "Government Contractor Defense" announced in Yearly v. W. A. Ross Construction Co., 304 U.S. 18 (1940) and in Re Agent Orange Liability Litigation, 534 F. Supp. 1046 (E.D.N.Y., 1982).

24) Defendant alleges, in the alternative, that the Plaintiffs' claim of injury and damage, if any, was the result of an unavoidable accident or occurrence.

25) Defendant alleges that exemplary damages are improper and that an award of punitive damages would amount to excessive punishment in violation of due process of law and in violation of the Constitutions of the United States, the State of Texas, any other state which has the most significant relationship to this action, and of the common law.

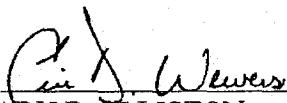
26) Defendant alleges that any alleged defects in its product, if any, were beyond the scientific and medical knowledge available at the time of manufacturing, and the state-of-the-art prevented this Defendant from knowing any defect.

27) Defendant alleges that the products for which this Defendant is responsible were at all times reasonably fit and suitable for the purposes for which they were sold and this Defendant denies that such products were in anywise defective for the use for which they were sold.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that upon trial hereof, Plaintiffs recover nothing as against it, and for such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

DeHAY & ELLISTON, L.L.P.
3500 NationsBank Plaza
901 Main Street
Dallas, Texas 75202-3736
Telephone: (214) 210-2400
Telefax: (214) 210-2500

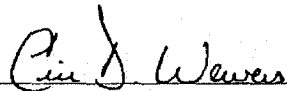


GARY D. ELLISTON
State Bar No. 06584700
ERIC D. WEWERS
State Bar No. 21236650

COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been forwarded to counsel of record for Plaintiffs herein, Mr. Herschell L. Hobson, LAW OFFICES OF HERSCHELL L. HOBSON, 2190 Harrison, Beaumont, Texas 77701, via certified mail, return receipt requested, this 31 day of October, 1997.



ERIC D. WEWERS

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

DISC
LEFT

'97 NOV 12 A8:49

November 11, 1997

Via Hand-Delivery

JOHN S. A. HOBSON
BEAUMONT, TEXAS

John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

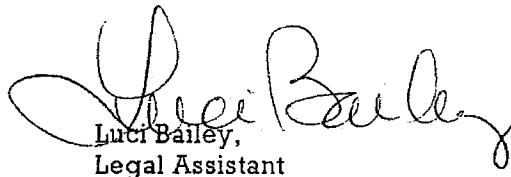
RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Appleman:

Enclosed for filing in the above-referenced case, please find Affidavit of Return of
Service by Authorized Person, along with executed citation as to defendant, Johnson
and Johnson Professional Inc.

Thank you for your attention in this regard.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/dm

Enclosure

136TH JUDICIAL DISTRICT

G:\WPDOC\WDW\054\02121\DISCOVER\ DARLENE.I

Respectfully submitted,

FOWLER, WILES & KEITH, L.L.P.

By: William Dixon Wiles
William Dixon Wiles
State Bar No. 21467800

1900 Cityplace Center
2711 N. Haskell
Dallas, Texas 75204-2944
(214) 841-3000
(214) 841-3099 - Telecopier

Attorney for Defendant,
McNeil, PPC, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of Defendant's First Set of Written Interrogatories to Plaintiff Darlene Coker was forwarded to plaintiffs' counsel by Certified Mail, Return Receipt Requested, this 22 day of October, 1997.

William Dixon Wiles
William Dixon Wiles

INTERROGATORIES

1. Please state:

- (a) Your full name and present address;
- (b) Your date and place of birth;
- (c) Your Social Security number;
- (d) The name, address and telephone number of your spouse, if married, as well as the date of your marriage;
- (e) The names, addresses, and dates of birth of all children born to or adopted by you.

2. Please list in chronological order the resident addresses where you have resided during your lifetime and state the inclusive dates of your residence in each location.

3. Please list in chronological order all employment, occupations and/or self-employment you have ever had, and state for each the following: identify each employer and your immediate supervisor in each position held; the first and last date of each such employment or self-employment and your annual gross income for each year of employment; your job title, job description and duties in connection with such employment; whether you were exposed to talc-containing products, asbestos-containing products, silica-containing products or other dust, fumes or gases at each

employment site; the dates you were exposed to each of these products and the name, trade name and manufacturer of each product that you were exposed to and the purpose for which it was used.

4. Please state whether you have been exposed to any talc-containing products, asbestos-containing products, silica-containing products, gases, fumes, or dust outside the workplace; the dates and frequency you were exposed to each product; the name, manufacturer and trade name of each product; and how you were exposed to each product.

5. Please state the name, address and telephone number of all potential parties to this lawsuit, and all persons having knowledge of facts relevant to the lawsuit, including facts relevant to the incident made the basis of this suit, or any facts relevant to any allegation or claim for damages by plaintiffs in this lawsuit.

6. Describe in detail how you have been damaged or injured by any product manufactured, marketed, distributed or sold by Johnson & Johnson Professional, Inc. f/k/a Johnson & Johnson Baby

Products and/or McNeil PPC, Inc. f/k/a Johnson & Johnson Baby Products.

7. If you have been a party to any claim or lawsuit for bodily injuries or personal injuries to yourself, give the style and cause number of the lawsuit, the date on which the lawsuit was filed, the name and address of your attorney, and the disposition of the claim or lawsuit.

8. Please list each and every physician, chiropractor, doctor of osteopathy or other practitioner of the healing arts, including psychologists and psychiatrists, who has examined or treated you from 1977 to the present, and state the illness or injury for which such health care provider treated or examined you, the dates of the treatment and the type of treatment received.

9. Please state the name and address of every hospital or clinic where you have been examined, treated, subjected to any tests or X-rays, received outpatient care, or were hospitalized from 1977 to the present, and include the dates of each examination, testing, hospitalization or treatment, the illness or

injury, which was the subject of each hospitalization, examination, testing or treatment and the treatment received.

10. With regard to your present medical condition:

- (a) How and under what circumstances did you learn that talc could be harmful to your health;
- (b) When did you first believe that your medical problems related to talc exposure;
- (c) When were you first told, and by whom, that your medical problems were the result of exposure to talc-containing products;
- (d) When were you first told, and by whom, that your medical problems were the result of exposure to talc-containing products manufactured, marketed, distributed or sold by Johnson & Johnson Professional, Inc. f/k/a Johnson & Johnson Baby Products and/or McNeil PPC, Inc. f/k/a Johnson & Johnson Baby Products.

11. Please state the factual basis for your claim that this defendant "made, sold, or specified, talc products which were defective and unreasonably dangerous as designed, manufactured and marketed."

12. Please state the factual basis for your allegation that this defendant had an "actual, subjective awareness of the capacity of airborne talc components in susceptible individuals ... [and]

intentionally failed to protect, warn, instruct or otherwise prevent the inevitable exposures."

13. Please state the factual basis for plaintiffs' allegation that this defendant caused the injuries of Darlene Coker by the "negligent, gross negligent, fraud, deceit, written representations and defective products" of this defendant.

14. Please state the factual basis for plaintiffs' allegation that this defendant "negligently and intentionally caused Darlene Coker to be fatally exposed to talc."

15. Please state whether you or your representative have in your possession, custody or control any statement previously made by any agent, servant or employee of Johnson & Johnson Professional, Inc. f/k/a Johnson & Johnson Baby Products and/or McNeil, PPC, Inc. f/k/a Johnson & Johnson Baby Products regarding the Johnson & Johnson products made the basis of this lawsuit. If so:

- (a) Please state the name and telephone number of the person from whom you have a statement;

- (b) Please state the name, address and telephone number of the person having actual or constructive possession of the statement.

16. Pursuant to Texas Rules of Civil Procedure, Rule 166b(2)(e)(1), please state the name, address and telephone number of any expert witness who may be called as an expert witness, the subject matter on which the witness is expected to testify, the mental impressions and opinions held by the expert and the facts known to the expert (regardless of when the factual information was acquired) which relate to or form the basis of the mental impressions and opinions held by the expert.

17. Pursuant to Texas Rules of Civil Procedure, Rule 166b(2)(e)(2), please state whether or not any expert witness identified by you in the preceding interrogatory has prepared any documents, tangible things including tangible reports, physical models, compilations of data and other material in anticipation of the expert's trial and deposition testimony. If so, please attach copies of the same to your answer to interrogatories.

18. Please state the name, address, telephone number, mental impressions and opinions of any expert witness who has been informally consulted by you, or who has been retained or specially employed by you or your representative in anticipation of litigation or preparation for trial if any documents or tangible things containing the impressions and opinions of any consulting experts have been reviewed by any experts whom plaintiffs will call to testify pursuant to Texas Rules of Civil Procedure Rule 166b(2)(e)(1). Please attach copies of these documents to your answers to interrogatories.

19. Please state the name of every talc-containing product that you have used during your lifetime, including:

- (a) The manufacturer's name and trade name of the product;
- (b) The dates and frequency of use of this product;
- (c) The purposes for which this product was used;
- (d) A description of the product.

20. If you have ever smoked, state when you started smoking, the type and brand of tobacco product you smoked, how much you have smoked of each type of tobacco product, the length of time you smoked each tobacco product, the name of any physician who has

advised you to stop smoking, and when and if you have stopped smoking, the reason you stopped smoking.

21. Please specify all damages which you are claiming in this lawsuit, listing the nature, basis and amount claimed for each, as well as how you calculated the amount.

22. Please identify all policies of insurance (other than of this defendant) that you believe provided coverage for all injuries arising out of the occurrence or occurrences made the basis of this lawsuit. Please include in your answer the policy number, name of the insurance company, together with the name, address and telephone number of the claims representative or adjuster who handled your claim.

23. If plaintiffs have entered into any settlement agreement, or received any monies from any named defendant or any third party, please state:

- (a) The name of the party or person with whom plaintiffs have entered into an agreement;
- (b) The date and essential terms of the agreement; and

- (c) The amount of money received by the plaintiffs from each person or party.

24. If any lien or subrogation interest has been asserted on behalf of any individual or entity (including any hospital or governmental agency or governmental program such as Medicare or Medicaid) that might apply to a recovery in this case against defendants by plaintiffs, or if plaintiffs have been the recipient of any Medicare, Medicaid benefits or funding by any governmental agency, please state:

- (a) The name, address and phone number of the individual or entity asserting such lien or subrogation interest, or making any payments to, or on behalf of plaintiffs;
- (b) The date that plaintiffs were given notice of any lien or subrogation interest;
- (c) Whether the notice of lien or subrogation interest was oral or written;
- (d) The amount of the lien or subrogation interest;
- (e) The amount of any payments made by or on behalf of plaintiffs, or the total amount of benefits or funding received by, or on behalf of, plaintiffs.

25. If you have ever served in any capacity in the military, please give the dates, rank, service number and branch of service; type of discharge from each tour of duty or enlistment; type of disability or pension you have received or are receiving, if any.

Respectfully submitted,

FOWLER, WILES & KEITH, L.L.P.

By: William Dixon Wiles
William Dixon Wiles
State Bar No. 21467800

1900 Cityplace Center
2711 N. Haskell
Dallas, Texas 75204-2944
(214) 841-3000
(214) 841-3099 - Telecopier

Attorney for Defendant,
McNeil, PPC, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of Defendant's First Set of Written Interrogatories to Plaintiff Roy Coker was forwarded to plaintiffs' counsel by Certified Mail, Return Receipt Requested, this 22 day of October, 1997.

William Dixon Wiles
William Dixon Wiles

INTERROGATORIES

1. Please state:

- (a) Your full name and present address;
- (b) Your date and place of birth;
- (c) Your Social Security number;
- (d) The name, address and telephone number of your spouse, if married, as well as the date of your marriage;
- (e) The names, addresses, and dates of birth of all children born to or adopted by you.

2. Please list in chronological order all employment, occupations and/or self-employment you have ever had, and state for each the following: identify each employer and your immediate supervisor in each position held; the first and last date of each such employment or self-employment and your annual gross income for each year of employment; your job title, job description and duties in connection with such employment; whether you were exposed to talc-containing products, asbestos-containing products, silica-containing products or other dust, fumes or gases at each employment site; the dates you were exposed to each of these products and the name, trade name and manufacturer of each product and the purpose for which it was used.

3. If you have been a party to any claim or lawsuit for bodily injuries or personal injuries to yourself, give the style and cause number of the lawsuit, the date on which the lawsuit was filed, the name and address of your attorney, the disposition of the claim or lawsuit.

4. Please specify all damages which you are claiming in this lawsuit, listing the nature, basis and amount claimed for each, as well as how you calculated the amount.

5. If you have ever smoked, state when you started smoking, what type of tobacco product you smoked, how much you have smoked of each type of tobacco product, the length of time you smoked each tobacco product, the name of any physician who has advised you to stop smoking, and when and if you have stopped smoking, the reason you stopped smoking.

6. Please state the name of every talc-containing product that you have used during your lifetime, including:

- (a) The manufacture and trade name of the product;
- (b) The dates and frequency of use of this product;

- (c) The purposes for which this product was used;
- (d) A description of the product.

7. Please list each and every physician, chiropractor, doctor of osteopathy or other practitioner of the healing arts, including psychologists and psychiatrists, who has examined or treated you for injuries arising out of the occurrence or occurrences made the basis of this lawsuit and state the illness or injury for which such health care provider treated or examined you, the dates of the treatment and the type of treatment received.

8. Please state the name and address of every hospital or clinic in which you have been examined for injuries arising out of the occurrence or occurrences made the basis of this lawsuit whether subject to any tests or X-rays, received outpatient care, or were hospitalized from and include the dates of each examination, testing, hospitalization or treatment, the illness or injury, which was the subject of each hospitalization, examination, testing or treatment and the treatment received.

9. Please state the factual basis for your claim that this defendant "made, sold, or specified, talc products which were defective and unreasonably dangerous as designed, manufactured and marketed."

10. Please state the factual basis for your allegation that this defendant had an "actual, subjective awareness of the capacity of airborne talc components in susceptible individuals ... [and] intentionally failed to protect, warn, instruct or otherwise prevent the inevitable exposures."

11. Please state the factual basis for plaintiffs' allegation that this defendant caused the injuries of Darlene Coker by the "negligent, gross negligent, fraud, deceit, written representations and defective products" of this defendant.

12. Please state the factual basis for plaintiffs' allegation that this defendant "negligently and intentionally caused Darlene Coker to be fatally exposed to talc."

13. Please state whether you have been exposed to any talc-containing products, asbestos-containing products, silica-containing products, gases, fumes, or dust outside the workplace; the dates and frequency you were exposed to each product; the name, manufacturer and trade name of each product; and how you were exposed to each product.

14. Please state whether you or your representative have in your possession, custody or control any statement previously made by any agent, servant or employee of Johnson & Johnson Professional, Inc. f/k/a Johnson & Johnson Baby Products and/or McNeil PPC, Inc. f/k/a Johnson & Johnson Baby Products regarding the Johnson & Johnson products made the basis of this lawsuit. If so:

- (a) Please state the name and telephone number of the person from whom you have a statement;
- (b) Please state the name, address and telephone number of the person having actual or constructive possession of the statement.

15. Please state the name, address and telephone number of all potential parties to this lawsuit, and all persons having knowledge of facts relevant to the lawsuit, including facts relevant to the incident made the basis of this suit, or any facts relevant to any allegation or claim for damages by plaintiffs in this lawsuit.

16. If any lien or subrogation interest has been asserted on behalf of any individual or entity (including any hospital or governmental agency or governmental program such as Medicare or Medicaid) that might apply to a recovery in this case against defendants by plaintiffs, or if plaintiffs have been the recipient of any Medicare, Medicaid benefits or funding by any governmental agency, please state:

- (a) The name, address and phone number of the individual or entity asserting such lien or subrogation interest, or making any payments to, or on behalf of plaintiffs;
- (b) The date that plaintiffs were given notice of any lien or subrogation interest;
- (c) Whether the notice of lien or subrogation interest was oral or written;
- (d) The amount of the lien or subrogation interest;
- (e) The amount of any payments made by or on behalf of plaintiffs, or the total amount of benefits or funding received by, or on behalf of, plaintiffs.

17. Pursuant to Texas Rules of Civil Procedure, Rule 166b(2)(e)(1), please state the name, address and telephone number of any expert witness who may be called as an expert witness, the subject matter on which the witness is expected to testify, the mental impressions and opinions held by the expert and the facts known to the expert (regardless of when the factual information was acquired) which relate to or form the basis of the mental impressions and opinions held by the expert.

18. Pursuant to Texas Rules of Civil Procedure, Rule 166b(2)(e)(2), please state whether or not any expert witness identified by you in the preceding interrogatory has prepared any documents, tangible things including tangible reports, physical models, compilations of data and other material in anticipation of the expert's trial and deposition testimony. If so, please attach copies of the same to your answer to interrogatories.

19. Please state the name, address, telephone number, mental impressions and opinions of any expert witness who has been informally consulted by you, or who has been retained or specially employed by you or your representative in anticipation of litigation or preparation for trial if any documents or tangible

things containing the impressions and opinions of any consulting experts have been reviewed by any experts whom plaintiffs will call to testify pursuant to Texas Rules of Civil Procedure Rule 166b(2)(e)(1). Please attach a copy of these documents to your answers to interrogatories.

20. If plaintiffs have entered into any settlement agreement, or received any monies from any named defendant or any third party, please state:

- (a) The name of the party or person with whom plaintiffs have entered into an agreement;
- (b) The date and essential terms of the agreement; and
- (c) The amount of money received by the plaintiffs from each person or party.

21. Please identify all policies of insurance (other than of this defendant) that you believe provided coverage for all injuries arising out of the occurrence or occurrences made the basis of this lawsuit. Please include in your answer the policy number, name of the insurance company, together with the name, address and telephone number of the claims representative or adjuster who handled your claim.

22. If you have ever served in any capacity in the military, please give the dates, rank, service number and branch of service; type of discharge from each tour of duty or enlistment; type of disability or pension you have received or are receiving, if any.

CAUSE NO. D-0157746

DARLENE COKER AND	§	IN THE DISTRICT COURT OF
SPOUSE, ROY COKER	§	
	§	
VS.	§	
	§	
BILL THAMES PHARMACY, INC.;	§	
CORRIGAN ENTERPRISES, INC.	§	
f/k/a Johnson-Johnson Baby	§	
f/k/a S.W.S. Pharmacy, Inc.;	§	JEFFERSON COUNTY, TEXAS
FERTITTAS FINER FOODS, INC.;	§	
GIANT FOOD DISCOUNT CITY,	§	
INC., HENKE & PILLOT, INC.	§	
HSTN., INC. f/k/a J&J Baby	§	
Products; JOHNSON & JOHNSON	§	
PROFESSIONAL; LOVOI AND	§	
SONS PHARMACIES, INC.;	§	
McNEIL PPC, INC. Products;	§	
THE KROGER COMPANY	§	136TH JUDICIAL DISTRICT

DEFENDANT'S FIRST REQUEST FOR PRODUCTION TO PLAINTIFFS

TO: Plaintiffs, DARLENE COKER and ROY COKER, by and through your Attorney of Record, Herschel L. Hobson, 2190 Harrison, Beaumont, Texas 77701

Pursuant to Rules 166b and 167, Texas Rules of Civil Procedure, defendant, the entity sued under the name McNEIL PPC, INC. f/k/a Johnson-Johnson Baby Products, requests voluntary production of the following documents and items in the possession or constructive possession of plaintiffs within thirty-one (31) days from the date of service of this request. Said items are to be produced for inspection and copying at the offices of William Dixon Wiles, 1900 Cityplace Center, 2711 N. Haskell, Dallas, Texas 75204.

Respectfully submitted,

FOWLER, WILES & KEITH, L.L.P.

By: William Dixon Wiles
William Dixon Wiles
State Bar No. 21467800

1900 Cityplace Center
2711 N. Haskell
Dallas, Texas 75204-2944
(214) 841-3000
(214) 841-3099 - Telecopier

Attorney for Defendant,
McNeil PPC, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of Defendants' First Request for Production was forwarded to plaintiffs' counsel by Certified Mail, Return Receipt Requested, this 22 day of October, 1997.

William Dixon Wiles
William Dixon Wiles

DEFINITION

The term "documents" shall mean and include any letters, correspondence, telegrams, mailgrams, messages, message forms, memoranda, notes, records, videotapes, negatives, slides, purchase orders, change orders, financial records, log books, records, diaries, minutes, contracts, change proposals, charts, invoices, graphs, shipping receipts, time cards, work orders, memoranda of telephone or personal conversations, negotiations, conferences, inter-office communications, reports, analysis, studies, tape records, computer runs, and any codes necessary to comprehend such runs, books, pamphlets, indexes, photographs, specifications, drawings, statements and any writing of any nature, however produced or reproduced, including all drafts and non-identical copies of such documents.

ITEMS TO BE PRODUCED

1. Copies of all hospital, pharmaceutical and medical bills, for which damages are being asserted in this lawsuit.
2. Pursuant to Texas Rules of Civil Procedure Rule 166b(2)(e)(1) and (2), any and all communications, documents and tangible things, including tangible reports, physical models, compilations of data and other material prepared by an expert or for an expert in anticipation of the expert's trial and deposition testimony, including all materials prepared by an expert used for consultation if it was prepared in anticipation of litigation or for trial and the consulting expert's opinions or impressions have been reviewed by a testifying expert.
3. A signed medical authorization form and employment authorization form attached hereto. Copies of any medical records obtained using such authorization will be furnished to plaintiffs' counsel without charge.
4. Any statements, documents or brochures, pamphlets or other compilations or data that you have from any agent, servant or employee of Johnson & Johnson Professional f/k/a Johnson & Johnson Baby Products and/or McNeil PPC, Inc. f/k/a Johnson & Johnson Baby Products.

5. Copies of sections, portions or pages of each and every book, treatise, periodical and/or pamphlet established or to be established as a reliable authority by the testimony of any expert witness that plaintiffs have identified or will identify or that plaintiffs will seek to have established as a reliable authority by requesting judicial notice of the same.
6. Any photographs, videotapes or movies or other representations of Darlene Coker which might be relevant to any allegation asserted by plaintiffs in this lawsuit.
7. Any and all correspondence, reports, notices or other documents in writing to plaintiffs or plaintiffs' representative evidencing that plaintiffs have been the recipient of any Medicare, Medicaid benefits or funding by any governmental agency, or purporting to assert a lien or subrogation interest on behalf of any individual or entity (including any hospital or governmental agency or governmental program such as Medicare or Medicaid) against any proceeds that might be recovered by plaintiffs in this lawsuit [this request does not include any contract between plaintiffs and any attorney representing plaintiffs].
8. Copies of all hospital, medical, pharmaceutical records and X-rays of Darlene Coker which are in your possession, custody or control.
9. Copies of all newspaper, magazine or other news clippings in your possession, custody or control that in any way pertain to, deal with or mention the harmful effects of Johnson & Johnson Professional, Inc. f/k/a Johnson & Johnson Baby Products and/or McNeil PPC, Inc. f/k/a Johnson & Johnson Baby Products' talc-containing products made the basis of this lawsuit.
10. Any and all tissue samples, slides, blocks, X-rays or other pathological material in your possession, custody or control pertaining to Darlene Coker regarding injuries made the basis of this lawsuit.
11. Any and all documents supporting plaintiffs' allegations that Johnson & Johnson Professional, Inc. f/k/a Johnson & Johnson Baby Products and/or McNeil PPC, Inc. f/k/a Johnson & Johnson Baby Products' products contain or contained "poisonous talc" as alleged in plaintiffs' petition.

12. Any and all documents that support plaintiffs' claims that Johnson & Johnson Professional, Inc. f/k/a Johnson & Johnson Baby Products and/or McNeil PPC, Inc. f/k/a Johnson & Johnson Baby Products' products are the producing cause of Plaintiff Darlene Coker's mesothelioma.
13. Any and all documents that support plaintiffs' claims that Johnson & Johnson Professional, Inc. f/k/a Johnson & Johnson Baby Products and/or McNeil PPC, Inc. f/k/a Johnson & Johnson Baby Products' products made the basis of this lawsuit are harmful.
14. Any and all personnel files, check stubs, payroll records, Social Security records or other documents concerning the plaintiffs' employment history.
15. Any and all military or government records or other documents concerning the plaintiffs' military service or, in the alternative, an authorization to secure such records.
16. Any and all documents that directly or indirectly relate or refer to plaintiffs' purchase of any talc-containing products.
17. Any and all settlement agreements, releases, covenants not to sue, or similar agreements, whether written or oral, that plaintiffs or someone on plaintiffs' behalf have made with any person or entity concerning Plaintiff Darlene Coker's injuries or any other aspect of this lawsuit.
18. Any and all documents that directly or indirectly refer or relate to the dangers or hazards of talc-containing products.
19. Any and all documents that directly or indirectly support, relate or refer to plaintiffs' claims for:
 - (a) Pain, suffering, mental anguish and grief;
 - (b) Physical impairment;
 - (c) Loss of earnings and earning capacity and financial support;
 - (d) Loss of inheritance;
 - (e) Loss of society;
 - (f) Hedonic damages for lifetime lost;
 - (g) Exemplary damages.

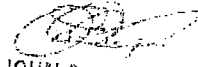
20. Any and all documents that directly or indirectly support, relate or refer to plaintiffs' claim for actual damages as set forth in Plaintiffs' Original Petition including but not limited to damage letters and other correspondence, all medical bills, invoices, or requests for payment by medical care providers, all canceled checks indicating payment for or with respect to any medical supplies or services provided to plaintiffs and all records, documents, or reports that show or support any claims, present or future, for loss of wages or earning capacity, for disability and impairment, for medical treatment and care, for pain, suffering, and mental anguish, for loss of enjoyment of life, and/or deterioration of the family unit.
21. Any and all documents pertaining to Johnson & Johnson Professional, Inc. f/k/a Johnson & Johnson Baby Products and/or McNeil PPC, Inc. f/k/a Johnson & Johnson Baby Products' products to which plaintiffs claim to have been exposed.
22. Copies of all policies of insurance (other than of this defendant) that you believe provided coverage for all injuries arising out of the occurrence or occurrences made the basis of this lawsuit.
23. Certified, true and complete copies of any and all state and federal income tax returns, and all attachments and schedules thereto, filed by plaintiffs, or on plaintiffs' behalf, jointly or separately, since 1992.
24. Any and all talc products or containers of talc products in your possession, custody or control used by Darlene Coker in her lifetime, or that were used in her presence during her lifetime.
25. Any and all talc products or containers of talc products in your possession, custody or control which plaintiffs believe to be evidence that Johnson & Johnson Professional f/k/a Johnson & Johnson Baby Products and/or McNeil PPC, Inc. f/k/a Johnson & Johnson Baby Products' baby powder contained "a poisonous talc."

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

October 28, 1997

FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS
Via Hand-Delivery
'97 OCT 28 P4:36

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704


JOHN S. APPLEMAN
DISTRICT CLERK

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

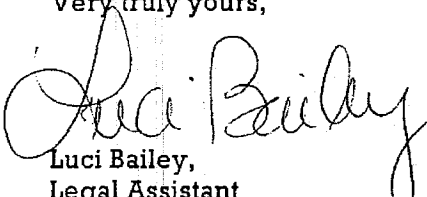
Dear Mr. Appleman:

Enclosed for filing in the above-referenced case, please find Notice of Oral/Video Deposition of Darlene Coker.

All counsel of record are being furnished a copy of same.

Thank you for your attention in this regard.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/dm

Enclosure

cc: Mr. Brock C. Akers Via facsimile
Mr. Gary J. Siller Via facsimile
Mr. Kent M. Adams Via facsimile
Mr. William Dixon Wiles Via facsimile
Mr. Daniel Foley Via facsimile
Corrigan Enterprises Incorporated Via UPS
Johnson and Johnson Professional Inc. Via UPS
Bill Thames Pharmacy c/o Joseph Seale, 3655 Calder, Beaumont, TX Via CMRRR P 189 682 304

CAUSE NO. D-157,746

DARLENE COKER, and spouse,
ROY COKER

vs.

BILL THAMES PHARMACY, INC., ET AL

§
§
§
§
§
§

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

136TH JUDICIAL DISTRICT

FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS

OCT 28 P4:36

NOTICE OF ORAL/VIDEO DEPOSITION

TO: ALL DEFENDANTS, by and through their attorneys of record and/or registered agents for service.

JOHN S. APPLEMAN
DISTRICT CLERK

PLEASE TAKE NOTICE that the Plaintiffs in the above-referenced cause of action will take the oral/video deposition of the person named below at the time and place designated in this notice pursuant to the Texas Rules of Civil Procedure.

WITNESS: Darlene Coker

DATE: Friday, November 21, 1997, continuing from day to day until completed

TIME: 9:00 a.m.

PLACE: Nell McCallum & Associates, Inc.
2615 Calder, Suite 111
Beaumont, TX 77702

COURT REPORTER: Irene Meguess
Nell McCallum & Associates, Inc.
2615 Calder, Suite 111
Beaumont, TX 77702

VIDEOGRAPHER: Legal Images
PO Box 315
Gilchrist, TX 77617

You are invited to appear and cross-examine the witness.

Respectfully submitted,

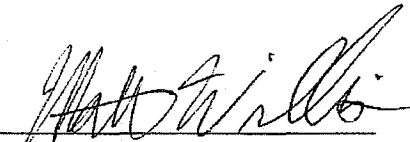
The Law Offices Of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701
Ph. #: (409) 838-6410
Fax #: (409) 838-6084

By: Herschel L. Hobson
Herschel L. Hobson
TBA# 09744600

ATTORNEY FOR PLAINTIFFS

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing instrument has been duly forwarded to all counsel of record on this 28th day of OCTOBER, 1997.


Herschel L. Hobson

MATTHEW R. WILLIS

LAW OFFICES OF
Herschel L. Hobson
ATTORNEY AT LAW

TELECOPIER TRANSMITTAL FORM

DATE: _____

TO:

Attorney name	phone fax
Mr. Brock C. Akers	(713) 552-0231
Mr. Daniel Foley	(603) 749-3963
Mr. Gary J. Siller	(713) 651-1944
Mr. Kent M. Adams	(409) 838-6950
Mr. William Dixon Wiles	(214) 841-3099

COMMENTS: _____

RE: Coker OUR FILE #: 2869-0

TOTAL # OF PAGES INCLUDING THIS TRANSMITTAL FORM: _____

Warning

The information contained in this communication is confidential, may be attorney-client privileged, may constitute inside information, and is intended only for the use of the addressee. Unauthorized use, disclosure or copying is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately at (409) 838-6410 and return the original message to us at the above address via the united states postal service. We will reimburse any costs you may incur in notifying and returning the message to us.

If any of these pages are not clearly received, please call (409) 838-6410 as soon as possible and ask for _____.

MW *GB*

CAUSE NO. D-157,746

DARLENE COKER, ET AL	§	IN THE DISTRICT COURT OF
	§	
VS.	§	JEFFERSON COUNTY, TEXAS
	§	
BILL THAMES PHARMACY, INC.,	§	
CORRIGAN ENTERPRISES, INC.	§	
f/k/a JOHNSON-JOHNSON BABY f/k/a	§	
S.W.S. PHARMACY INC., FERTITTAS	§	
FINER FOODS, INC., GIANT FOOD	§	
DISCOUNT CITY, INC., HENKE &	§	
PILLOT, INC., HSTN. INC. f/k/a	§	
J&J BABY PRODUCTS, JOHNSON &	§	
JOHNSON PROFESSIONAL, LOVOI	§	
AND SONS PHARMACIES, INC.,	§	
MCNEIL PPC INC. PRODUCTS, THE	§	
KROGER COMPANY	§	136TH JUDICIAL DISTRICT

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Johnson & Johnson Consumer Companies, Inc. ("J&J"), defendant in the above-entitled and numbered cause, and files this Motion for Summary Judgment. In support thereof, defendant would respectfully show unto the Court as follows:

I.
PROCEDURAL LAW

Rule 166a(i) of the Texas Rules of Civil Procedure provides that a party may move for summary judgment on the grounds that there is no evidence on one or more essential elements of a claim or defense on which the opposing party bears the burden of proof. TEX. R. CIV. P. 166a(i) (Vernon Supp. 1998). Specifically, Rule 166a(i) provides:

SL-8 P.3:48

Clarified

After adequate time for discovery, a party without presenting summary judgment evidence may move for summary judgment on the ground that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. The motion must state the elements as to which there is no evidence. The Court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact.

Id.

II.

PLAINTIFFS' CLAIMS AGAINST JOHNSON & JOHNSON

This is a personal injury case involving a product liability claim in which plaintiffs, Darlene and Roy Coker, allege that Darlene Coker's alleged exposure to Johnson & Johnson products caused her to contract mesothelioma. Specifically, plaintiffs allege that J&J "made, sold, or specified, talc products which were defective and unreasonably dangerous as designed, manufactured and marketed." Plaintiffs' Original Petition at 2. Plaintiffs further allege that "[t]hese products, used as as intended and foreseen, necessarily released poisonous talc, which was a producing cause of [Darlene Coker's] mesothelioma." *Id.*

III.

NO EVIDENCE OF CAUSATION

Under Texas law, when a plaintiff's cause of action is one for personal injury, she "must prove that the conduct of the defendant caused an event and that this event caused the plaintiff to suffer compensable injuries." *Burroughs Wellcome Co. v. Crye*, 907 S.W.2d 497, 499 (Tex. 1995). In an action for injuries due to a defective product, whether the claim is grounded in negligence or strict liability, the plaintiff is must establish that a causal connection between the alleged defective product and her injury exists. Product liability claims based on negligence require a showing of proximate

cause and product liability claims based on strict liability require a showing of producing cause. *Union Pump Co. v. Allbritton*, 898 S.W.2d 773, 775 (Tex. 1995). Common to both proximate and producing cause is causation in fact which requires the plaintiff to demonstrate that the acts or omissions of the defendant were a substantial factor in bringing about the injury which would not otherwise have occurred. *Id.*; *Prudential Insurance Co. v. Jefferson Assocs.*, 896 S.W.2d 156, 161 (Tex. 1995); *Nixon v. Mr. Property Management Co.*, 690 S.W. 2d 546, 549 (Tex. 1985). Plaintiffs have produced no evidence that any alleged acts or omissions by J&J in manufacturing and supplying any product are a cause in fact of Darlene Coker's mesothelioma.

IV. ADEQUATE TIME FOR DISCOVERY

Plaintiffs' case was filed September 23, 1997. Plaintiffs requested an expedited trial and the Court set the case for June 22, 1998 but subsequently continued the case until September 21, 1998.

Although at this time plaintiffs' medical causation expert has completed all necessary work, he has not tendered any opinion that J&I products in any way caused Darlene Coker's mesothelioma, nor have plaintiffs produced any other evidence to support that proposition.

V. CONCLUSION

Defendant, Johnson & Johnson Consumer Companies, Inc., is entitled to summary judgment because there is no evidence of one or more essential elements of plaintiff's claim on which the plaintiff would have the burden of proof at trial. After adequate time for discovery, plaintiffs have failed to produce any evidence of causation. Specifically, plaintiffs have produced no evidence that Darlene Coker's alleged exposure to Johnson & Johnson products was, in any way, a cause in fact

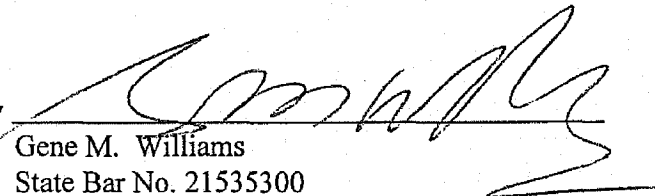
of her mesothelioma. Accordingly, defendant is entitled to summary judgment on all plaintiff's claims against all defendants.

WHEREFORE, PREMISES CONSIDERED, defendant, Johnson & Johnson Consumer Companies, Inc., prays that this motion be set for hearing, with notice to plaintiff and that on completion of the hearing, its Motion for Summary Judgment be in all things granted, and that the Court enter a judgment that plaintiffs take nothing, and that defendant recover its costs of court from plaintiff. Defendant also prays for such other and further relief, both general and special, to which this defendant may be justly entitled.

Respectfully submitted,

MEHAFFY & WEBER
Attorneys for Defendant, Johnson & Johnson
Consumer Companies, Inc.

By



Gene M. Williams
State Bar No. 21535300
Sandra F. Clark
State Bar No. 04294520
M. Raymond Hatcher
State Bar No. 24002243

Post Office Box 16
Beaumont, TX 77704
Telephone: (409) 835-5011
Telecopier: (409) 835-5177

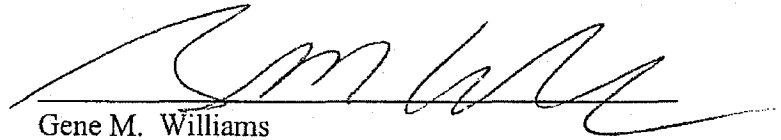
MW/133598

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2023/08/14

CERTIFICATE OF CONFERENCE

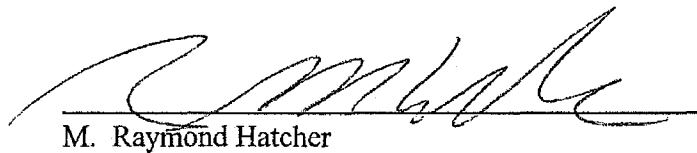
I certify that an associate in my office conferred with the plaintiff's attorney, Heschel Hobson, regarding this motion, and Mr. Hobson is opposed.



Gene M. Williams

CERTIFICATE OF SERVICE

8 A copy of the foregoing instrument has been forwarded to all counsel of record on this the
day of September, 1998.



M. Raymond Hatcher

MW/133598

2023/09/14

10/10/98 2:29 PM
SEP -8 P3:48

CAUSE NO. D-157,746

DARLENE COKER, ET AL	§	IN THE DISTRICT COURT OF
	§	
VS.	§	JEFFERSON COUNTY, TEXAS
	§	
BILL THAMES PHARMACY, INC.,	§	
CORRIGAN ENTERPRISES, INC.	§	
f/k/a JOHNSON-JOHNSON BABY f/k/a	§	
S.W.S. PHARMACY INC., FERTITTAS	§	
FINER FOODS, INC., GIANT FOOD	§	
DISCOUNT CITY, INC., HENKE &	§	
PILLOT, INC., HSTN. INC. f/k/a	§	
J&J BABY PRODUCTS, JOHNSON &	§	
JOHNSON PROFESSIONAL, LOVOI	§	
AND SONS PHARMACIES, INC.,	§	
MCNEIL PPC INC. PRODUCTS, THE	§	
KROGER COMPANY	§	136TH JUDICIAL DISTRICT

ORDER ON MOTION FOR SUMMARY JUDGMENT

On this date came on to be heard Johnson & Johnson Consumer Companies, Inc.'s Motion for Summary Judgement on the issue that plaintiffs have no evidence on one or more essential elements of their claim. The Court having considered the evidence presented is of the opinion that the motion is meritorious and should, in all things be GRANTED.

It is therefore ORDERED, ADJUDGED and DECREED that Johnson & Johnson Consumer Companies, Inc.'s Motion for Summary Judgment is GRANTED and that plaintiffs should take nothing against defendant by way of this lawsuit.

SIGNED THIS _____ DAY OF _____, 1998

JUDGE PRESIDING

47432

APPROVED AND ENTRY REQUESTED:

GENE M. WILLIAMS
Attorney for Johnson & Johnson
Consumer Companies, Inc.

2023/08/14

24

CAUSE NO. D-157,746

FILED
DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

DARLENE COKER, and spouse,
ROY COKER

§
§
§
§
§

IN THE DISTRICT COURT OF

vs.

JEFFERSON COUNTY, TEXAS

BILL THAMES PHARMACY, INC., ET AL

136TH JUDICIAL DISTRICT

MAR -4 P4:23

JOHN S. ...
DISTRICT CLERK

NOTICE OF NONSUIT

COME NOW Plaintiffs, by and through their attorney of record, and advise the Court that they desire to take a non-suit, without prejudice, against only the Defendants, Bill Thames Pharmacy Inc., Corrigan Enterprises, Inc., Fertittas Finer Foods, Inc., Giant Food Discount City, Inc., Henke & Pillot, Inc. Houston, Kroger Co. (The), Lovoi and Sons Pharmacies, Inc., McNeil PCC Inc., and Sommers Drug Store. This Notice of Non-suit is only applicable to Defendants, Bill Thames Pharmacy Inc., Corrigan Enterprises, Inc., Fertittas Finer Foods, Inc., Giant Food Discount City, Inc., Henke & Pillot, Inc. Houston, Kroger Co. (The), Lovoi and Sons Pharmacies, Inc., McNeil PCC Inc., and Sommers Drug Store, and does not apply to any other Defendant in this cause of action.

Respectfully submitted,

The Law Offices Of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701
Ph. #: (409) 838-6410
Fax #: (409) 838-6084

By: 

Herschel L. Hobson
TBA# 09744600

ATTORNEY FOR PLAINTIFFS

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing instrument has been duly forwarded to all counsel of record on this 30th day of March, 1998.



Herschel L. Hobson

CAUSE NO. D-157,746

DARLENE COKER, and spouse, § IN THE DISTRICT COURT OF
ROY COKER §
§
vs. § JEFFERSON COUNTY, TEXAS
§
BILL THAMES PHARMACY, INC., ET AL § 136TH JUDICIAL DISTRICT

PLAINTIFFS' NOTICE OF NON-SUIT

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW the Plaintiffs, DARLENE COKER, and spouse, ROY COKER, and pursuant to the Texas Rules of Civil Procedure, hereby gives notice to this Court and to all parties to this suit that they are taking a nonsuit without prejudice as to the defendants, McNeill PCC Inc. (formerly known as Johnson-Johnson Baby Products); Johnson & Johnson Professional Inc. (formerly known as J&J Baby Products); Johnson & Johnson Consumer Companies Inc., only, and effective immediately upon filing of this Notice.

Respectfully submitted,

The Law Offices Of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701
Ph. #: (409) 838-6410
Fax #: (409) 838-6084

By: 

Herschel L. Hobson
TBA# 09744600

ATTORNEY FOR PLAINTIFFS

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing instrument has been duly forwarded to all counsel of record on this 15th day of February 1999.


Herschel L. Hobson

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FEB -5 P 4:00
JAMES S. APPLETON
DISTRICT CLERK

\\dbward\motions\coker-nonsuit (mcneill, j&j entities).doc

CAUSE NO. D-157,746

DARLENE COKER, and spouse
ROY COKER

VS.

BILL THAMES PHARMACY, INC.,
ET AL

§
§
§
§
§
§
§

IN THE DISTRICT COURT OF

JEFFERSON COUNTY, TEXAS

THE 136th JUDICIAL DISTRICT

**DEFENDANT, FERTITTA'S FINER FOODS, INC.'S MOTION TO TRANSFER VENUE, AND IN
THE ALTERNATIVE, MOTION TO DISMISS ON THE BASIS OF FORUM NON CONVENIENS,
AND SUBJECT THERETO, ORIGINAL ANSWER TO PLAINTIFFS' ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, FERTITTA'S FINER FOODS, INC., one of the Defendants in the above-entitled and numbered cause of action, and makes and files this its Motion to Transfer Venue, and in the Alternative, Motion to Dismiss on the Basis of Forum Non Conveniens, and Subject Thereto, Original Answer to Plaintiffs' Original Petition, and would show unto this Most Honorable Court the following:

MOTION TO TRANSFER VENUE

I.

Pursuant to Rule 86 of the Texas Rules of Civil Procedure, Defendant, FERTITTA'S FINER FOODS, INC., files this Motion to Transfer Venue prior to or concurrently with any pleading or appearance in this cause of action. Defendant would show that, according to the Texas Rules of Civil Procedure, Jefferson County, Texas is an improper county for venue purposes. A proper county for venue purposes is Dallas County, Texas, or in the alternative, Harris County, Texas, or in the alternative, Bexar County, Texas. Defendant specifically denies the venue facts pled in Plaintiff's live Petition.

II.

Defendant, FERTITTA'S FINER FOODS, INC., is a corporation duly organized and existing under the laws of the State of Texas and licensed to do business in this State. At the institution of this suit, at the time of service of process herein, and at the time of the filing of this Motion, this Defendant believes other Defendants' principal places of business/principal offices in the State of Texas are in Dallas County, Texas, or in the alternative, Harris County, Texas, or in the alternative, Bexar County, Texas. This Defendant is a retailer only, in this alleged products liability case. The alleged product manufacturer defendant has no principal place of business in this county. On information and belief, the plaintiffs are residents of Hardin County, Texas, and it is unknown whether the torts, if any herein, occurred in Jefferson County, Texas.

III.

Defendant, FERTITTA'S FINER FOODS, INC., objects to venue in Jefferson County, Texas, the county in which this action is instituted, on the ground that Jefferson County, Texas, is an inconvenient venue and the action should be transferred to Dallas County, Texas, or in the alternative, Harris County, Texas, or in the alternative, Bexar County, Texas in accordance with Texas Civil Practice and Remedies Code Section 15.002(b). More specifically, maintenance of this action in Jefferson County, Texas, would work an injustice on the defendants considering the defendants' economic and personal hardship; the balance of the interest of all the parties predominates in the favor of the action being brought in Dallas County, Texas, or in the alternative, Harris County, Texas, or in the alternative, Bexar County, Texas; and the transfer of the action to Dallas County, Texas, or in the alternative, Harris County, Texas, or in the alternative, Bexar County, Texas, would not work an injustice to any other party.

IV.

Defendant, FERTITTA'S FINER FOODS, INC., requests that this Court transfer this case to Dallas County, Texas, or in the alternative, Harris County, Texas, or in the alternative, Bexar County, Texas, each a county of proper venue.

MOTION TO DISMISS ON THE BASIS OF FORUM NON CONVENIENS

In the alternative, pursuant to Section 17.051(b) of the Texas Civil Practice and Remedies Code, this Defendant moves to dismiss based upon the doctrine of Forum Non Conveniens. By the filing of this Motion concurrently with the Motion to Transfer Venue and prior to the filing of the answer, this Defendant reserves the right to supplement and amend this Motion to Dismiss on the Basis of Forum Non Conveniens as more information becomes available to it, and is in no way waiving its right to pursue a Motion to Dismiss on the Basis of Forum Non Conveniens.

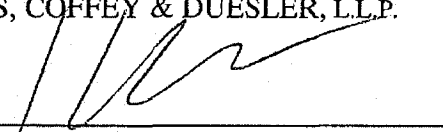
DEFENDANT'S ORIGINAL ANSWER SUBJECT TO MOTION TO TRANSFER VENUE AND IN THE ALTERNATIVE, MOTION TO DISMISS ON THE BASIS OF FORUM NON CONVENIENS

Subject to the foregoing Motion to Transfer Venue, and in the Alternative, Motion to Dismiss on the Basis of Forum Non Conveniens, Defendant, FERTITTA'S FINER FOODS, INC., denies generally each and every, all and singular, of the material allegations contained in Plaintiffs' Original Petition and says the same are untrue in whole or in part, and demands strict proof thereof.

WHEREFORE, PREMISES CONSIDERED, Defendant, FERTITTA'S FINER FOODS, INC., prays that this Court grant its Motion to Transfer Venue, and in the Alternative, Motion to Dismiss on the Basis of Forum Non Conveniens, and that upon final hearing hereof, Plaintiffs recover nothing, that Defendant recover its costs and that Defendant be granted such other and further relief as to which Defendant may show itself justly entitled.

Respectfully submitted,

ADAMS, COFFEY & DUESLER, L.L.P.



KENT M. ADAMS
TEXAS BAR NO. 00869200
PAMELA J. WILLIAMS
TEXAS BAR NO. 00791936
PETROLEUM TOWER
550 FANNIN, SUITE 830
P. O. BOX 7505
BEAUMONT, TEXAS 77726-7505
(409) 838-6767
FAX: (409) 838-6950


ATTORNEYS FOR DEFENDANT,
FERTITAS FINER FOODS, INC.,

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Defendant's Motion to Transfer Venue, and in the Alternative, Motion to Dismiss on the Basis of Forum Non Conveniens, and Subject Thereto, Original Answer to Plaintiffs' Original Petition has been forwarded to the following counsel of record via U. S. mail, certified mail, return receipt requested, on this the 20th day of October, 1997:

Mr. Herschel L. Hobson
THE LAW OFFICES OF HERSCHEL L. HOBSON
2190 Harrison
Beaumont, Texas 77701

CERTIFIED MAIL # P 523 860 124
RETURN RECEIPT REQUESTED



KENT M. ADAMS

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

October 27, 1997

Via Hand-Delivery

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

Please prepare citations to be served on the following defendants in the above-
referenced case:

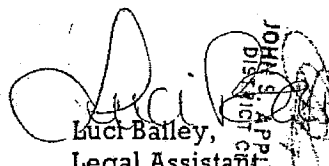
✓
Corrigan Enterprises Incorporated
856 Gembler Road
San Antonio, TX 78219

Johnson and Johnson Professional Inc.
350 N. St. Paul Street
Dallas, TX 75201

I have enclosed copies of the petition, along with our firm check in the amount of
\$16.00.

Thank you for your attention in this regard.

Very truly yours,


Luci Bailey,
Legal Assistant

FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS
97 OCT 27 P 4:30

/lb/dm

Enclosure

PHILLIPS & AKERS

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

3400 PHOENIX TOWER

3200 SOUTHWEST FREEWAY

HOUSTON, TEXAS 77027

(713) 552-9595

FAX (713) 877-2531

BROCK C. AKERS

BOARD CERTIFIED PERSONAL INJURY
AND CIVIL TRIAL LAW

TEXAS BOARD OF LEGAL SPECIALIZATION

BOARD CERTIFIED CIVIL TRIAL ADVOCATE

BY THE NATIONAL BOARD OF TRIAL ADVOCACY

DIRECT DIAL

(713) 552-0232

E-MAIL

Brock_Akers@panda-law.com

October 16, 1997

VIA FEDERAL EXPRESS

John S. Appleman, District Clerk
Jefferson County Courthouse
P.O. Box 3707
Beaumont, Texas 77704-3707

RE: No. D157746; Darlene Coker and spouse, Roy Coker v. Bill Thames Pharmacy, Inc.,
et al; In the 136th Judicial District Court of Jefferson County, Texas

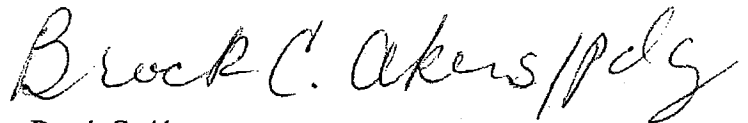
Dear Mr. Appleman:

I enclose five (5) self-addressed stamped envelopes from this firm along with this letter which is being sent pursuant to Rule 246 of the Texas Rules of Civil Procedure.

Pursuant to said Rule, I would ask that you inform this non-resident attorney and firm of all trial settings in this case using the enclosed self-addressed envelopes to do so.

Also enclosed is an additional copy of this letter which I would ask that you please date and file stamp and return in the extra envelope provided.

Sincerely,

A handwritten signature in dark ink that reads "Brock C. Akers/pdg". The signature is fluid and cursive, with the initials "pdg" written in a smaller, more compact style at the end.

Brock C. Akers

BCA:pdg
7715.069

Enclosures

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS

November 20, 1997

'97 NOV 20 P4:24

Via Hand-Delivery

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

JOHN S. APPLEMAN
DISTRICT CLERK

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

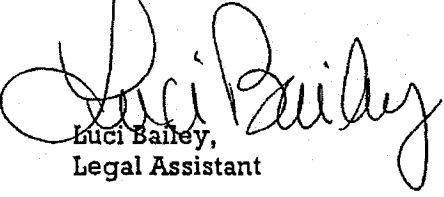
Enclosed for filing in the above-referenced case, please find the following:

- Affidavit of Judy L. Pollard, custodian of records for Columbia Beaumont Medical Center, along with 6 pages of billing records;
- Certification of Hospital/H.M.O. Bills of Nick White, along with 6 pages of billing records from Brigham and Women's Hospital;
- Affidavit of Carolyn B. Young, custodian of records for Dr. Vern Mills, along with 128 pages of medical records;
- Affidavit of Scott Dare, custodian of records for Dr. Vern Mills, along with 3 pages of billing records;

By copy of this letter, all counsel of record are advised that these records are available for copying at a cost of \$.25 per page.

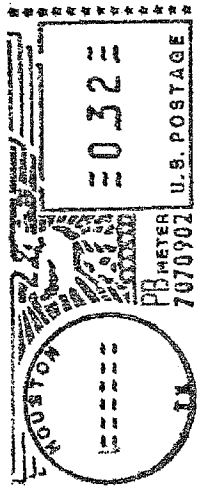
Thank you for your attention in this regard.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/dm
Enclosure

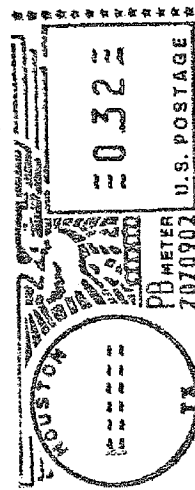
cc: Mr. Brock C. Akers Via facsimile
Mr. Daniel Foley Via facsimile
Mr. Eric D. Wewers Via facsimile
Mr. Gary J. Siller Via facsimile
Mr. Gene Williams Via facsimile
Mr. James M. Harris, Jr. Via facsimile
Mr. Kent M. Adams Via facsimile
Mr. Richard Corrigan Via facsimile



PHILLIPS & AKERS
3400 PHOENIX TOWER
3200 SOUTHWEST FREEWAY
HOUSTON, TX 77027

PHILLIPS & AKERS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
3400 PHOENIX TOWER
3200 SOUTHWEST FREEWAY
HOUSTON, TEXAS 77027

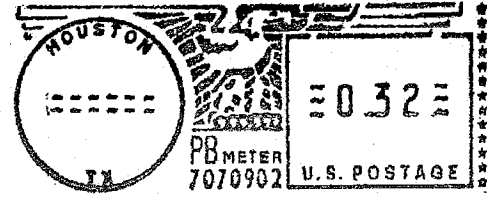
BCH



PHILLIPS & AKERS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
3400 PHOENIX TOWER
3200 SOUTHWEST FREEWAY
HOUSTON, TEXAS 77027

PHILLIPS & AKERS
3400 PHOENIX TOWER
3200 SOUTHWEST FREEWAY
HOUSTON, TX 77027

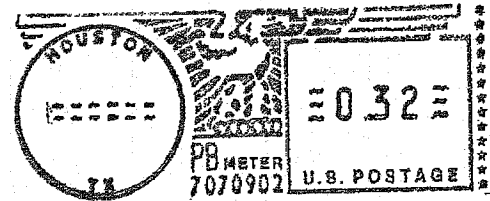
S & AKERS
INAL CORPORATION
VEYS AT LAW
OENIX TOWER
HWEST FREEWAY
I, TEXAS 77027



PHILLIPS & AKERS
3400 PHOENIX TOWER
3200 SOUTHWEST FREEWAY
HOUSTON, TX 77027

PA

S & AKERS
ONAL CORPORATION
NEYS AT LAW
IOENIX TOWER
THWEST FREEWAY
N, TEXAS 77027



PHILLIPS & AKERS
3400 PHOENIX TOWER
3200 SOUTHWEST FREEWAY
HOUSTON, TX 77027

A

CAUSE NO. D-157746

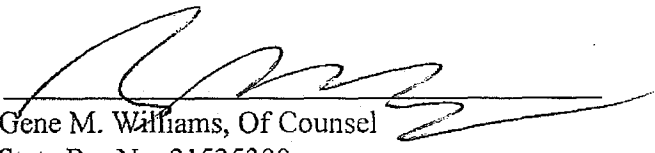
DARLENE COKER, AND SPOUSE ROY § IN THE DISTRICT COURT OF
COKER §
§
VS. §
§
§
BILL THAMES PHARMACY INC., §
CORRIGAN ENTERPRISES, INC. f/k/a §
JOHNSON-JOHNSON BABY f/k/a § JEFFERSON COUNTY, TEXAS
S.W.S. PHARMACY INC., FERTITTAS §
FINER FOODS, INC., GIANT FOOD §
DISCOUNT CITY, INC., HENKE & §
PILLOT, INC., HSTN. INC. f/k/a J&J §
BABY PRODUCTS, JOHNSON & §
JOHNSON PROFESSIONAL, LOVOI §
AND SONS PHARMACIES, INC., §
MCNEIL PPC INC. PRODUCTS, THE §
KRONER COMPANY § 136TH DISTRICT COURT

**NOTICE OF SUBMISSION OF JOHNSON & JOHNSON
PROFESSIONAL'S MOTION TO QUASH SERVICE OF PROCESS**

Please take that the attached Motion to Quash Service of Process has been filed and will be submitted to the Court for consideration on November 24, 1997. The Court will consider and rule on the Motion without a hearing, unless you request one, in accordance with the Texas Rules of Civil Procedure and local rules of Court.

Respectfully submitted,

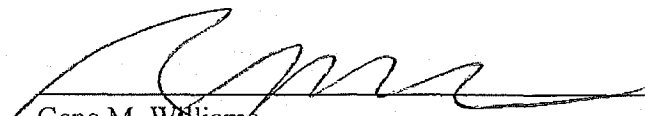
MEHAFFY & WEBER
Attorney for Defendant,
JOHNSON & JOHNSON PROFESSIONAL, INC.

By 
Gene M. Williams, Of Counsel
State Bar No. 21535300

Post Office Box 16
Beaumont, Texas 77704
Telephone: (409) 835-5011
Telecopier: (409) 835-5729

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been forwarded to all counsel of record on this the 21 day of November, 1997.


Gene M. Williams

MEHAFFY & WEBER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
2615 CALDER AVENUE
POST OFFICE BOX 16
BEAUMONT, TEXAS 77704

ONE ALLEN CENTER
500 DALLAS, SUITE 1200
HOUSTON, TEXAS 77002
TELEPHONE (713) 655-1200
FAX (713) 655-0222

1006 GREEN AVENUE
P.O. BOX 189
ORANGE, TEXAS 77630
TELEPHONE (409) 886-7766
FAX (409) 886-7790

TELEPHONE (409) 835-5011
FAX (409) 835-5177
(409) 835-5729

November 12, 1997

Re: NO. D-157746; Darlene Coker, and spouse Roy Coker vs. Bill Thames Pharmacy
Inc., et al; M&W File No. 3125-11

Mr. John S. Appleman
District Clerk
Jefferson County Courthouse
P. O. Box 3707
Beaumont, Texas 77704

Dear Mr. Appleman:

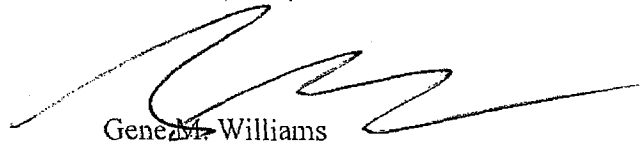
Enclosed please find the **MOTION FOR SUBSTITUTION OF COUNSEL** in
connection with the above styled and numbered cause.

Please file stamp the enclosed copy of same reflecting the date of filing.

Copies of these documents are being forwarded to opposing counsel by certified mail.

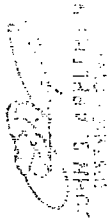
Thank you for your courtesy and attention to this matter.

Yours very truly,


Gene M. Williams
For the Firm

FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS
Enc.

97 NOV 14 P5:00



MW/98571

MEHAFFY & WEBER

Mr. John S. Appleman
November 12, 1997

Page 2

cc:

Mr. Herschel L. Hobson
The Law Offices of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701

CM/RRR

MW/98571

CAUSE NO. D-157746

DARLENE COKER, AND SPOUSE ROY § IN THE DISTRICT COURT OF
COKER §
§
VS. §
§
BILL THAMES PHARMACY INC., §
CORRIGAN ENTERPRISES, INC. f/k/a §
JOHNSON-JOHNSON BABY f/k/a § JEFFERSON COUNTY, TEXAS
S.W.S. PHARMACY INC., FERTITTAS §
FINER FOODS, INC., GIANT FOOD §
DISCOUNT CITY, INC., HENKE & §
PILLOT, INC., HSTN. INC. f/k/a J&J §
BABY PRODUCTS, JOHNSON & §
JOHNSON PROFESSIONAL, LOVOI §
AND SONS PHARMACIES, INC., §
MCNEIL PPC INC. PRODUCTS, THE §
KROGER COMPANY § 136TH DISTRICT COURT

MOTION FOR SUBSTITUTION OF COUNSEL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, William Dixon Wiles, Fowler, Wiles & Keith, counsel of record for Johnson & Johnson and moves the Court to substitute as counsel of record for Johnson & Johnson, Gene M. Williams and Sandra F. Clark of the law firm of Mehaffy & Weber, P. O. Box 16, Beaumont, Texas 77704. For all purposes, Gene M. Williams and Sandra F. Clark are designated as the responsible attorneys for Johnson & Johnson.

Respectfully submitted,

FOWLER, WILES & KEITH

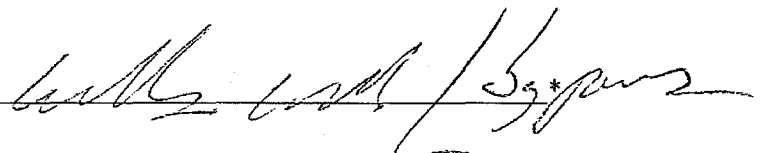

JOHN S. APPELMAN
DISTRICT CLERK

97 NOV 14 PM 5:00

MW/98328

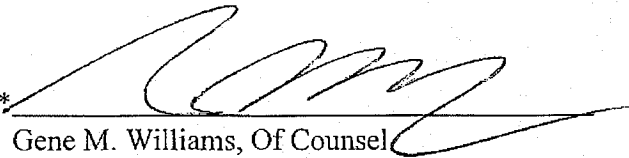
FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS

By

William Dixon Wiles, Of Counsel
Signed by permission

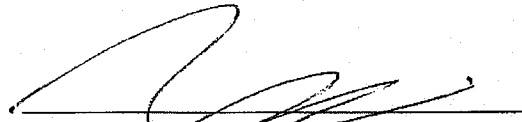
1900 Cityplace Center
2711 North Haskell
Dallas, Texas 75204-2944
Telephone: (214) 841-3000
Telecopier: (214) 841-3099

* 
Gene M. Williams, Of Counsel
State Bar No. 21535300

Mehaffy & Weber
P. O. Box 16
Beaumont, Texas 77704
Telephone: (409) 835-5011
Telecopier: (409) 835-5729

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been forwarded by certified mail to all counsel of record on this the 14 day of June 1997.


Gene M. Williams

2

CAUSE NO. D-157746

DARLENE COKER, AND SPOUSE ROY § IN THE DISTRICT COURT OF
COKER §
§
VS. §
§
BILL THAMES PHARMACY INC., §
CORRIGAN ENTERPRISES, INC. f/k/a §
JOHNSON-JOHNSON BABY f/k/a § JEFFERSON COUNTY, TEXAS
S.W.S. PHARMACY INC., FERTITTAS §
FINER FOODS, INC., GIANT FOOD §
DISCOUNT CITY, INC., HENKE & §
PILLOT, INC., HSTN. INC. f/k/a J&J §
BABY PRODUCTS, JOHNSON & §
JOHNSON PROFESSIONAL, LOVOI §
AND SONS PHARMACIES, INC., §
MCNEIL PPC INC. PRODUCTS, THE §
KROGER COMPANY § 136TH DISTRICT COURT

ORDER APPROVING SUBSTITUTION OF COUNSEL

ON THIS DAY came on to be heard the Motion for Substitution of Counsel of Johnson & Johnson, defendant herein, and the Court, having considered the motion, is of the opinion that the motion should be GRANTED. It is, therefore,

ORDERED, ADJUDGED and DECREED that Gene M. Williams and Sandra F. Clark of Mehaffy & Weber is hereby substituted as counsel of record for defendant Johnson & Johnson in place of William Dixon Wiles.

SIGNED this 18th day of November, 1997.

JOHN S. APPELMAN
DISTRICT CLERK

JUDGE PRESIDING

NOV 14 1997
00:58 PM

FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS

FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS
NOV 20 1997
3:11 PM

MW/98328

CAUSE NO. D-157746

MW
for

DARLENE COKER, AND SPOUSE ROY COKER	§	IN THE DISTRICT COURT OF
	§	
	§	
VS.	§	
	§	
BILL THAMES PHARMACY INC.,	§	
CORRIGAN ENTERPRISES, INC. f/k/a	§	
JOHNSON-JOHNSON BABY f/k/a	§	JEFFERSON COUNTY, TEXAS
S.W.S. PHARMACY INC., FERTITTAS	§	
FINER FOODS, INC., GIANT FOOD	§	
DISCOUNT CITY, INC., HENKE &	§	
PILLOT, INC., HSTN. INC. f/k/a J&J	§	
BABY PRODUCTS, JOHNSON &	§	
JOHNSON PROFESSIONAL, LOVOI	§	
AND SONS PHARMACIES, INC.,	§	
MCNEIL PPC INC. PRODUCTS, THE	§	
KRONER COMPANY	§	136TH DISTRICT COURT

DEFENDANT'S MOTION TO QUASH SERVICE

Defendant, Johnson & Johnson Professional, Inc. (incorrectly sued as Johnson & Johnson Professional), asked the Court to quash the citation and service of Plaintiffs' petition.

A. Introduction

1. Plaintiff, Darlene Coker, and spouse Roy Coker, sued Defendant for personal injuries and related damages in this suit based on products liability.

B. Argument and Authorities

2. The Court should quash the citation and service of Plaintiff's petition because service of process of Plaintiff's petition was defective; specifically, the service was made on Johnson & Johnson Medical Inc., rather than Johnson & Johnson Professional, Inc.. Johnson & Johnson Medical Inc. is not an agent for service for Johnson & Johnson Professional, Inc. (See attached letter from Johnson & Johnson Medical, Inc. to counsel, attached hereto as Exhibit A).

C. Conclusion

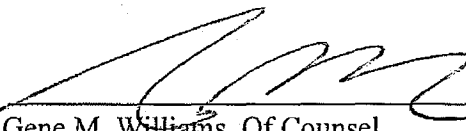
5. Because service of citation was defective due to service on an unrelated corporation that is not authorized to accept service on behalf of Johnson & Johnson Professional, Inc., the Court should quash the service of citation.

D. Prayer

6. For these reasons Defendant asked the Court to sustain Defendant's Motion to Quash and enter an Order quashing the citation and service of Plaintiff's petition, which will provide additional time for Defendant to file an answer.

Respectfully submitted,

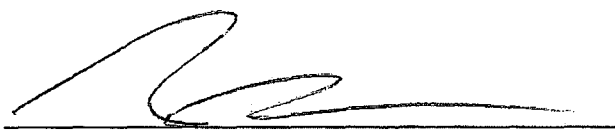
MEHAFFY & WEBER
Attorney for Defendant,
JOHNSON & JOHNSON PROFESSIONAL, INC.

By 
Gene M. Williams, Of Counsel
State Bar No. 21535300

Post Office Box 16
Beaumont, Texas 77704
Telephone: (409) 835-5011
Telecopier: (409) 835-5729

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been forwarded to all counsel of record on this the 21 day of November, 1997.


Gene M. Williams

CAUSE NO. D-157746

DARLENE COKER, AND SPOUSE ROY COKER	§	IN THE DISTRICT COURT OF
	§	
	§	
VS.	§	
	§	
BILL THAMES PHARMACY INC.,	§	
CORRIGAN ENTERPRISES, INC. f/k/a	§	
JOHNSON-JOHNSON BABY f/k/a	§	JEFFERSON COUNTY, TEXAS
S.W.S. PHARMACY INC., FERTITTAS	§	
FINER FOODS, INC., GIANT FOOD	§	
DISCOUNT CITY, INC., HENKE &	§	
PILLOT, INC., HSTN. INC. f/k/a J&J	§	
BABY PRODUCTS, JOHNSON &	§	
JOHNSON PROFESSIONAL, LOVOI	§	
AND SONS PHARMACIES, INC.,	§	
MCNEIL PPC INC. PRODUCTS, THE	§	
KRONER COMPANY	§	136TH DISTRICT COURT

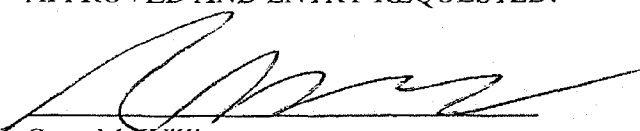
ORDER ON DEFENDANT'S MOTION TO QUASH SERVICE OF PROCESS

On the _____ day of _____, 1997, the Court considered Defendant Johnson & Johnson Professional, Inc.'s Motion to Quash Service of Process. After considering the pleadings, the citation, and the service, the Court SUSTAINS the Motion to Quash Service of Process. Therefore, the Court orders Defendant to answer on the Monday next at the expiration of twenty days from the date of this Order.

SIGNED this ____ day of _____, 1997.

PRESIDING JUDGE

APPROVED AND ENTRY REQUESTED:

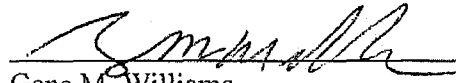

Gene M. Williams
Attorney for Defendant,
Johnson & Johnson Professional, Inc.

MW/99851

Gene M. Williams
Mehaffy & Weber
P. O. Box 16
Beaumont, Texas 77704
Telephone: (409) 835-5011
Telecopier: (409) 835-5729

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been forwarded to all counsel of record on this the 21 day of August, 1997.



Gene M. Williams

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

FILED
DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS

'97 NOV 25 P4:30

October 28, 1997

Via Hand-Delivery

JOHN S. APPLEMAN
DISTRICT CLERK

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

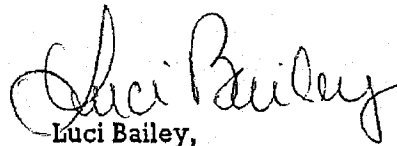
Dear Mr. Appleman:

Enclosed for filing in the above-referenced case, please find Plaintiffs' Amended Notice of Oral/Video Deposition of Darlene Coker.

All counsel of record are being furnished a copy of same.

Thank you for your attention in this regard.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/dm

Enclosure

cc: Mr. Brock C. Akers Via facsimile
Mr. Daniel Foley Via facsimile
Mr. Eric D. Wewers Via facsimile
Mr. Gary J. Siller Via facsimile
Mr. Gene Williams Via facsimile
Mr. James M. Harris, Jr. Via facsimile
Mr. Kent M. Adams Via facsimile
Mr. Richard Corrigan Via facsimile
Neil McCallum & Associates..... Via facsimile
Legal Images Via facsimile

CAUSE NO. D-157,746

FILED
DISTRICT COURT OF
JEFFERSON CO. TEXAS

DARLENE COKER, and spouse,
ROY COKER

§
§
§
§
§
§

IN THE DISTRICT COURT OF

'97 NOV 25 P 4:30

vs.

JEFFERSON COUNTY, TEXAS

BILL THAMES PHARMACY, INC., ET AL

136TH JUDICIAL DISTRICT

JOHN S. APPLEMAN
DISTRICT CLERK

PLAINTIFFS' AMENDED NOTICE OF ORAL/VIDEO DEPOSITION

TO: ALL DEFENDANTS, by and through their attorneys of record and/or registered agents for service.

PLEASE TAKE NOTICE that the Plaintiffs in the above-referenced cause of action will take the oral/video deposition of the person named below at the time and place designated in this notice pursuant to the Texas Rules of Civil Procedure.

WITNESS: Darlene Coker

DATE: Wednesday, December 10, 1997, continuing from day to day until completed

TIME: 10:00 a.m.

PLACE: Nell McCallum & Associates, Inc.
2615 Calder, Suite 111
Beaumont, TX 77702

CT. REPORTER: Irene Meguess
Nell McCallum & Associates, Inc.
2615 Calder, Suite 111
Beaumont, TX 77702

VIDEOGRAPHER: Legal Images
PO Box 315
Gilchrist, TX 77617

You are invited to appear and cross-examine the witness.

The Law Offices Of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701
Ph. #: (409) 838-6410
Fax #: (409) 838-6084

Respectfully submitted,


By: 

Herschel L. Hobson
TBA# 09744600

ATTORNEY FOR PLAINTIFFS

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing instrument has been duly forwarded to all counsel of record on this 24th day of November, 1997.



Herschel L. Hobson

ONE ALLEN CENTER
500 DALLAS, SUITE 1200
HOUSTON, TEXAS 77002
TELEPHONE (713) 655-1200
FAX (713) 655-0222

MEHAFFY & WEBER
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
2615 CALDER AVENUE
POST OFFICE BOX 16
BEAUMONT, TEXAS 77704

TELEPHONE (409) 835-5011
FAX (409) 835-5177
(409) 835-5729

1006 GREEN AVENUE
P.O. BOX 189
ORANGE, TEXAS 77630
TELEPHONE (409) 886-7766
FAX (409) 886-7790



December 1, 1997

Re: NO. D-157746; Darlene Coker, and spouse Roy Coker vs. Bill Thames Pharmacy
Inc., et al; M&W File No. 3125-11

Herschel L. Hobson
The Law Offices of Herschel L. Hobson
2190 Harrison
Beaumont, Texas 77701

FAX and CM/RRR

Dear Herschel:

Enclosed please find **FIRST SET OF INTERROGATORIES TO PLAINTIFF
FROM MCNEIL PPC, INC. F/K/A JOHNSON-JOHNSON BABY PRODUCTS** in
connection with the above-styled and numbered cause.

Yours Very Truly,



Gene M. Williams
For the Firm

GMW/jah
cc:
Mr. John S. Appleman w/o enc.
District Clerk
Jefferson County Courthouse
P. O. Box 3707
Beaumont, Texas 77704

Mr. James M. Harris, Jr.
Harris & Lively, PC
550 Fannin, Suite 845
P.O. Box 830
Beaumont, Texas 77704

JOHN S. APPLEMAN
DISTRICT CLERK

97 DEC -2 A9:53

FILED
DISTRICT CLERK
JEFFERSON COUNTY, TEXAS

MEHAFFY & WEBER

Herschel Hobson
December 1, 1997

Page 2

Mr. Kent M. Adams
Adams, Duesler & Donaldson
550 Fannin, Suite 830
P.O. Box 7505
Beaumont, Texas 77726-7505

Mr. Brock C. Akers
Phillips & Akers
3200 Phoenix Tower
3200 Southwest Freeway
Houston, Texas 77027

William Dixon Wiles
Fowler, Wiles & Keith
1900 Cityplace Center
2711 North Haskell
Dallas, Texas 75204-2944

Mr. Richard P. Corrigan
1920 Nacogdoches Road
Suite 100
San Antonio, Texas 78209-2294

Mr. Eric D. Wewers
Dehay & Elliston, LLP
NationsBank Plaza
901 Main Street, Suite 3500
Dallas, Texas 75202

Mr. Gary J. Siller
Greggs & Harrison
1301 McKinney, Suite 3200
Houston, Texas 77010-3033

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW DISTRICT COURT OF
JEFFERSON COUNTY TEXAS

'97 DEC -3 P1:27

December 2, 1997

JOHN S. APPLEMAN
DISTRICT CLERK

Mr. John Appleman
Jefferson County District Clerk
PO Box 3707
Beaumont, Texas 77704

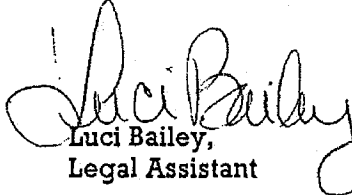
RE: CAUSE NO. D-157,746; DARLENE COKER, and spouse, ROY COKER v. BILL
THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT
OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Appleman:

Enclosed for filing in the above-referenced case, please find a Rule 11 Agreement
signed by Gene Williams.

Thank you for your attention in this regard.

Very truly yours,


Luci Bailey,
Legal Assistant

/lb/dm

Enclosure

HERSCHEL HOBSON →→→ MEH WEB

002/002

LAW OFFICES OF
Herschel L. Hobson, Ph.D., J.D.
ATTORNEYS AT LAW

MEH
405

November 28, 1997

Mr. Gene Williams
Mahaffy & Weber
PO Box 16
Beaumont, TX 77704

RE: CAUSE NO. D-187,746; DARLENE COKER, and spouse, ROY COKER v. BILL THAMES PHARMACY INC., ET AL; IN THE 136TH JUDICIAL DISTRICT COURT OF JEFFERSON COUNTY, TEXAS; OUR FILE NO. 2869-0

Dear Mr. Williams:

This letter is to serve as a Rule 11 Agreement wherein you have agreed to withdraw Defendant McNeil PPC, Inc., d/b/a Johnson-Johnson Baby Products, First Set of Interrogatories to Darlene Coker, Roy Coker and Requests for Production to Plaintiffs. This letter is further to confirm that Plaintiffs are in agreement to answering the Master Set of Discovery that I previously circulated, in addition to the two questions you added.

If this letter accurately reflects our agreement, please sign on the line below and return to me via facsimile for filing with the Court.

Thank you for your cooperation in this regard.

Very truly yours,

[Signature]

Herschel L. Hobson

HLH/dm

[Signature]
Gene Williams

12-1-97
Date

P.S.,
Herschel,

Our agreement also includes the proviso that you will timely provide me with responses to the "master" set of discovery and any medical in your possession. This needs to be done relatively early

this week since you have now issued a notice for Ms. Coker's deposition for December 10th.

2120 HARRISON AVE., BEAUMONT, TEXAS 77701 • (409) 838-6410 • FAX (409) 838-6084

97 DEC -3 P1:27
DISTRICT CLERK
JEFFERSON COUNTY, TEXAS

CAUSE NO. D-157746

CB

DARLENE COKER, AND SPOUSE ROY COKER	§	IN THE DISTRICT COURT OF
	§	
	§	
VS.	§	
	§	
BILL THAMES PHARMACY INC.,	§	
CORRIGAN ENTERPRISES, INC. f/k/a	§	
JOHNSON-JOHNSON BABY f/k/a	§	JEFFERSON COUNTY, TEXAS
S.W.S. PHARMACY INC., FERTITTAS	§	
FINER FOODS, INC., GIANT FOOD	§	
DISCOUNT CITY, INC., HENKE &	§	
PILLOT, INC., HSTN. INC. f/k/a J&J	§	
BABY PRODUCTS, JOHNSON &	§	
JOHNSON PROFESSIONAL, LOVOI	§	
AND SONS PHARMACIES, INC.,	§	
MCNEIL PPC INC. PRODUCTS, THE	§	
KROGER COMPANY	§	136TH DISTRICT COURT

AMENDED MOTION FOR SUBSTITUTION OF COUNSEL

COMES NOW William Dixon Wiles, Fowler, Wiles & Keith, counsel of record for McNeil PPC, Inc. f/k/a Johnson-Johnson Baby Products and moves the Court to substitute as counsel of record for Johnson & Johnson, Gene M. Williams and Sandra F. Clark of the law firm of Mehaffy & Weber, P. O. Box 16, Beaumont, Texas 77704. For all purposes, Gene M. Williams and Sandra F. Clark are designated as the responsible attorneys for McNeil PPC, Inc. f/k/a Johnson-Johnson Baby Products.

Respectfully submitted,

FOWLER, WILES & KEITH

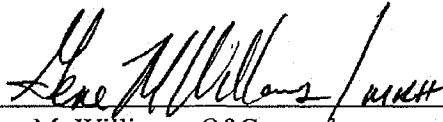
By William Dixon Wiles *
William Dixon Wiles, Of Counsel
Signed by permission

FILED
DISTRICT COURT OF
JEFFERSON COUNTY, TEXAS
MW/100071

'97 NOV 25 A 8:42

JOHNS APOLEMAN
DISTRICT CLERK

1900 Cityplace Center
2711 North Haskell
Dallas, Texas 75204-2944
Telephone: (214) 841-3000
Telecopier: (214) 841-3099

* 
Gene M. Williams, Of Counsel
State Bar No. 21535300

Mehaffy & Weber
P. O. Box 16
Beaumont, Texas 77704
Telephone: (409) 835-5011
Telecopier: (409) 835-5729

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been forwarded by certified mail to all counsel of record on this the 24 day of November, 1997.

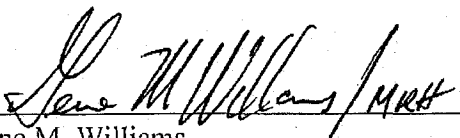

Gene M. Williams

Exhibit 218



FACSIMILE

From	Jean-Pierre GRANGE	To	JOHN O'SHAUGHNESSY
Fax	(33-1) 47.47.58.05	Company	JOHNSON & JOHNSON
Date	17 Apr 98	Fax	908 524 2788
Copies	R.Zazenski	Pages	1 (Cover page included)

Re. Coker v. J&J

Dear John,

I am just coming back from Italy where I met two scientists who are preparing documents to help you solve your case.

Professor Sandrone, geologist from the university of Torino, will certify that the talc mined in Val Chisone before 1960 was not different from the one mined to day. He promised to send a letter. We have not yet received it and Val Chisone is recalling him.

The issue of asbestos in talc was raised in the early seventies and there was no reason before to carry out this type of analysis.

An important fact is that the workers examined by Rubino began to work between 1921 and 1950, therefore the period of exposure is the same as the one referred to by Coker. These workers did not show any mesothelioma despite very intense and prolonged exposure to talc dust.

Dr. Coggiola, from the Institute of Occupational Medicine of Torino, is updating the work of Rubino. Unfortunately his work will not be ready for publication before 1999. It is a long process but the quality of the epidemiological work depends directly on minimizing the number of lost subjects. Finding the vital status and the eventual cause of death of the last 5% takes more time than for the previous 95%!

Anyhow he will certify that no mesothelioma has been seen in the population of the talc workers. He promised me to send a letter directly to you.

I shall be in Italy the whole week and will give you a call on Monday the 27th to check if the documents have been sent.

Best regards

JP Grange

JOHNSON & JOHNSON
CORPORATE HEADQUARTERS
GENERAL LAW DEPARTMENT
ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, NEW JERSEY 08933-7002

FACSIMILE TRANSMISSIONS COVERSHEET

DATE: April 16, 1998

TO: Rick Zazenski

COMPANY: Luzenac

FACSIMILE NO.: (303) 643-0446

FROM: John C. O'Shaughnessy, Esq.

TELEPHONE NO.: (732) 524-2474

FACSIMILE NO.: (732) 524-2788

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

COMMENTS:

(IF THERE IS A PROBLEM WITH THIS TRANSMISSION, PLEASE CALL 732-524-2469)

CONFIDENTIALITY NOTICE

THIS MESSAGE IS INTENDED ONLY FOR THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE SOLELY TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

Johnson & Johnson

OFFICE OF
GENERAL COUNSEL

ONE JOHNSON & JOHNSON PLAZA
NEW BRUNSWICK, N.J. 08933-7002

April 16, 1998

VIA FACSIMILE

Mr. Jean-Pierre Grange
Luzenac Group
131, Avenue Charles de Gaulle
92200 NEVILLY
FRANCE

Re: Coker v. Johnson & Johnson Consumer Companies, Inc.
(Texas "Mesothelioma" Lawsuit)

Dear Jean-Pierre:

Thank you so much for providing me with the documents related to talc testing and the Val Chisone deposit. Those documents dated back to 1982. In our lawsuit, the person suing Johnson & Johnson had exposure to Italian talc used in our baby powder that was produced from 1945 through 1963. After 1963 or so, Johnson & Johnson began using Vermont talc.

Therefore, it is very important that we be able to provide evidence to the Court that the talc produced from Val Chisone in the 1945-1963 time frame was free from asbestiform fibers.

In order to do this, the Court will require that we produce a witness who has personal knowledge of those facts. Therefore, I ask the following:

- Is there a geologist who has knowledge of the Val Chisone deposit and the mining operations during the time period 1942 to 1963? Ideally, this witness would be able to testify that the talc taken from the mine and provided to Johnson & Johnson U.S. during 1945-1963 was free from asbestiform fibers. This can be based on the particular geology of the Val Chisone deposit and whatever testing was done during that time period.
- There is an additional way to show that the talc provided to Johnson & Johnson from Val Chisone during 1945-1963 was free from asbestiform fibers. The documents you provided to me show that from 1982 to the present the Val Chisone deposit does not contain asbestiform fibers. If a geologist can testify that the ore body that produced

that talc is the same ore body that produced the talc shipped to Johnson & Johnson U.S. in 1945-1963 then it follows that this talc is also free from asbestiform fibers even though there may not be documents showing test results.

- Of course, if there is any documentary evidence of testing performed on the talc or the mine during the time period 1942 through 1963 that would be important for us to have.
- You informed me that the Rubino study has been updated. Are the results available? Have the results been published? Is there a scientist who participated in this study available to testify? Is there one witness who can cover both areas – that Val Chisone produced talc without asbestiform fibers during 1945-1963 and the Rubino study update?

Since this case will go to trial on June 22, 1998 we are operating under tight timelines. We need to identify a witness or witnesses for the Val Chisone deposit and Rubino study as soon as we can and I appreciate your attention to my request.

I spoke with Rich Zazenski who informed me that you will be in Italy next week so perhaps this is an opportune time to identify the appropriate person or persons who will be able to come to the U.S. at the end of June to testify.

I will try to arrange a phone conference with you to discuss these issues when you return from Italy.

Once again, thank you for your assistance.

Best regards,



John C. O'Shaughnessy

cc: Richard Zazenski

Exhibit 219

01/10/01 13:07 FAX 973 360 9831

DRINKER BIDDLE SHANLEY

017/027

DRINKER BIDDLE & SHANLEY LLP
A Pennsylvania Limited Liability Partnership
500 Campus Drive
Florham Park, New Jersey 07932-1047
(973) 360-1100
Attorneys for Defendants
JOHNSON & JOHNSON CONSUMER COMPANIES, INC.
AND JOHNSON & JOHNSON

THERESA KRUSHINSKI and FRANK
KRUSHINSKI,

Plaintiffs,

v.

JOHNSON & JOHNSON BABY
PRODUCTS COMPANY, A DIVISION OF
JOHNSON & JOHNSON CONSUMER
PRODUCTS COMPANY, INC., a subsidiary
of JOHNSON & JOHNSON, INC.;
JOHNSON & JOHNSON, INC.; ABC
CORPORATIONS (fictitious corporations,
subsidiaries and or divisions of JOHNSON &
JOHNSON, INC.); THE ESTEE LAUDER
COMPANIES, INC.; DEF
CORPORATIONS (fictitious corporations);
THE PUIG GROUP, trading as NINA
RICCI; XYZ CORPORATIONS (fictitious
corporations or business entities, trading as
JEAN PATOU),

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
DOCKET NUMBER MID-L-9389-99

CIVIL ACTION

DEFENDANTS JOHNSON & JOHNSON
CONSUMER COMPANIES, INC. AND
JOHNSON & JOHNSON'S ANSWERS TO
PLAINTIFFS' SUPPLEMENTAL
INTERROGATORIES

OBJECTIONS AND ANSWERS TO SUPPLEMENTAL INTERROGATORIES

1. If you contend that Johnson's Baby Powder was the subject of pre-market approval or licensure by the Federal Food and Drug Administration under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040, 21 U.S.C. § 301 et seq. or the "Public Health Service Act," 58 Stat. 682, 42 U.S.C. § 201 and was approved or licensed; or is generally recognized as safe and effective pursuant to conditions established by the Food and Drug Administration and applicable regulations,

J&J-0162339

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DRINKER BIDDLE SHANLEY

018/027

including packaging and labeling regulations, set forth all facts and identify all documents upon which you intend to rely to support your contentions.

RESPONSE: It is defendants' position that the provision of the statute quoted in this interrogatory precludes any award of punitive damages against the Johnson & Johnson defendants. Johnson & Johnson's Baby Powder is not subject to specific pre-market approval or licensure under the Federal Food Drug and Cosmetic Act. However, The FDA regulates cosmetics such as baby powders. The FDA has certain labeling and ingredient guidelines which are applicable to Johnson & Johnson's Baby Powder. Further defendant has at all required times submitted voluntary information regarding complaints or reactions pursuant to CFR 710 et seq. Defendant objects to providing supporting documentation as overly broad and unduly burdensome and equally available to the plaintiff.

2. Define the term "cosmetic talc" in complete detail as used by Defendant in Defendant's response to Demands # 1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, and #29, of Plaintiff's Demand for Admissions by Plaintiff by stating the range of size and the chemical formula of the talc particles contained in Johnson's Baby Powder.

RESPONSE: Cosmetic talc is one of three grades of commercial talc, the other two grades are industrial and pharmaceutical. Industrial grades of talc vary widely in talc mineral content from below 50% up to ranges approaching pure talc mineral assay, and also vary widely in particle size distribution. Cosmetic talcs normally have a talc mineral assay of 90% or more. Pharmaceutical talc assay is generally from 95% to 100% pure talc mineral.

3. Define the term "industrial talc" in complete detail as used by Defendant in Defendant's response to Demands # 1, #2, #3, #4, #5, #6, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #19, #20, #21, and #29, of Plaintiff's Demand for Admissions by Johnson & Johnson by stating the range of size and the chemical formula of the talc particles contained in industrial talc.

RESPONSE: Industrial talc is one of three grades of commercial talc, the other two grades are cosmetic and pharmaceutical. Industrial grades of talc vary widely in talc mineral content from below 50% up to ranges approaching pure talc mineral assay, and also vary widely in particle size distribution. Cosmetic talcs normally have a talc mineral assay of 90% or more. Pharmaceutical talc assay is generally from 95% to 100% pure talc mineral.

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DRINKER BIDDLE SHANLEY

018/027

4. Define the term "normal and expected use" of Johnson's Baby Powder as used by Defendant in Defendant's response to Demands #23, #24, #25, #26, #27, #28, and #29 of Plaintiffs Demand for Admissions by Johnson & Johnson, Inc. dated February 23, 2000.

RESPONSE: Johnson's Baby Powder is expected to be used by shaking the powder into the hand of the consumer and applied to the skin.

5. Identify all written warnings contained on labels affixed to containers of Johnson's Baby Powder containing talc by setting forth all language contained on the label(s); the date each label was first placed upon containers of Johnson's Baby Powder containing talc, the dimensions of the label and the size of the type used for each portion of the label and the reason the language was incorporated.

RESPONSE: See labeling documents found among the documents produced in response to plaintiffs' document demand.

6. Identify all studies performed by Johnson & Johnson, Johnson & Johnson Consumer Product or any of their subsidiaries, divisions, affiliates or any agent, or outside consultant designed to determine manner in which consumers apply and or use Johnson's Baby Powder.

RESPONSE: Defendant objects to this interrogatory as over broad, vague and ambiguous. Furthermore, the documents requested by plaintiffs may be confidential, proprietary, and subject to trade secret privileges. Subject to the foregoing objections, see documents provided in responses to request for production.

7. Identify all scientific testing performed by Johnson & Johnson, any of its subsidiaries, divisions, affiliates or any agent, or outside consultant designed to determine whether there are any health risks posed to users of Johnson's Baby Powder or any other cosmetic powders containing talc.

RESPONSE: Defendant objects to this interrogatory as overly broad, vague, and ambiguous. Specifically, plaintiffs use of "health risks" include a myriad of conditions unrelated to any issue in this lawsuit. Furthermore, the documents requested by plaintiffs may be confidential, proprietary, and subject to trade secret privileges. Subject to the foregoing objections, defendant refers plaintiff to the studies provided in response to plaintiffs requests for production.

8. Identify and describe all clinical testing performed by Johnson & Johnson, any of its subsidiaries, divisions, affiliates or any agent, or outside consultant upon Johnson's Baby Powder.

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DRINKER BIDDLE SHANLEY

020/027

RESPONSE: Defendant objects to this interrogatory as overly broad, vague, and ambiguous. Specifically, plaintiffs use of "all clinical testing" include a myriad of testing unrelated to any issue in this lawsuit. Furthermore, the documents requested by plaintiffs may be confidential, proprietary, and subject to trade secret privileges. Subject to the foregoing objections, defendant refers plaintiff to the studies provided in response to plaintiffs requests for production.

9. Describe all refining processes undergone by the "highly refined cosmetic talc" contained in Johnson's Baby Powder prior to shipment for distribution for sale to consumers and identify the person or entity responsible for performing such process and the location where such processes are performed.

RESPONSE: Defendant objects to further response to this interrogatory on the grounds that it requests confidential and proprietary information subject to trade secret privileges. Further, this interrogatory is not relevant as plaintiffs have not made any manufacturing defect claim. Subject to the foregoing objections, the talc used in Johnson & Johnson's Baby Powder is selected from specific sources based on material specifications. Talc ore containing approximately 50% talc is taken from specific mining sites and is introduced into the refining process. Ore is crushed, dried and rolled to form a powder. Wetting is introduced to obtain a slurry which is introduced into a multiple horizontal float cell process which removes non talc particles. Talc is sampled at routine intervals and is prepared for shipping with methodology to retain aseptic qualities. Talc is maintained in dedicated silos and transported by air veying system for fragrance blending then filling and capping with routine sampling. The bottles are then packaged for shipping. These processes occur at the West Windsor Vermont purification plant and at the packaging facility in Royston GA. The individual with significant knowledge of these items is Randy Corder, an employee of defendant.

10. Describe all refining processes which the talc contained in Johnson's Baby Powder has undergone prior to receipt by Johnson & Johnson in complete detail and identify all individuals or entities involved in or responsible for performing such processes, by name and address.

RESPONSE: Defendant objects to further response to this interrogatory on the grounds that it requests confidential and proprietary information subject to trade secret privileges. Further, this interrogatory is not relevant as plaintiffs have not made any manufacturing defect claim. Subject to the foregoing objections, the talc used in Johnson & Johnson's Baby Powder is selected from specific sources based on material specifications. Talc ore containing approximately 50% talc is taken from specific mining sites and is introduced into the refining process.

- 4 -

J&J-0162342

01/10/01 13:09 FAX 973 380 9831

DRINKER BIDDLE SHANLEY

021/027

Ore is crushed, dried and rolled to form a powder. Wetting is introduced to obtain a slurry which is introduced into a multiple horizontal float cell process which removes non talc particles. Talc is sampled at routine intervals and is prepared for shipping with methodology to retain aseptic qualities. Talc is maintained in dedicated silos and transported by air veying system for fragrance blending then filling and capping with routine sampling. The bottles are then packaged for shipping. These processes occur at the West Windsor Vermont purification plant and at the packaging facility in Royston GA. The individual with significant knowledge of these items is Randy Corder, an employee of defendant.

11. Is Defendant Johnson & Johnson aware of the existence of any studies which have been conducted to determine whether any adverse health effects have been associated with the long term use of cosmetic powders which contain talc? If so please identify each such study by setting forth the identity of the individual(s) or entity responsible for conducting such study, whether such study has been published, where such study has been published and whether or not the results of the study have been subject to peer review.

RESPONSE: Defendant objects to this interrogatory in that it is overly broad, vague, ambiguous, and unduly burdensome. Specifically, "adverse health effects" is overly broad in that it calls for the identification of documents unrelated to any condition at issue in this lawsuit. In addition, such documents may be confidential or subject to a protective order. Subject to the foregoing objections, medical literature concerning talc and talcosis are available in the public domain. In addition, Defendant refers you to studies provided in response to plaintiffs' request for production.

12. Is Defendant Johnson & Johnson aware of the existence of any studies which have been conducted to determine whether any adverse health effects have been associated with the long term use of cosmetic powders which contain corn starch? If so please identify each such study by setting forth the identity of the individual(s) or entity responsible for conducting such study, whether such study has been published, where such study has been published and whether or not the results of the study have been subject to peer review.

RESPONSE: Defendant objects to this interrogatory as overly broad and vague in that it does not define "adverse health effects," and that it seeks discovery related to a product not at issue in this case. "Adverse health effects" could include the identification of documents unrelated to any condition or product at issue in this lawsuit. Subject to the foregoing objection, medical literature related to cornstarch is available in the public domain.

01/10/01 13:09 FAX 973 360 9831

DRINKER BIDDLE SHANLEY

022/027

13. Is Defendant Johnson & Johnson aware of the existence of any studies which have been conducted to determine whether Johnson's Baby Powder containing talc is effective in reducing the likelihood of infants developing diaper rash or reducing its effects? If so please identify each such study by setting forth the identity of the individual(s) or entity responsible for conducting such study, whether such study has been published, where such study has been published and whether or not the results of the study have been subject to peer review.

RESPONSE: Defendant objects to this interrogatory as irrelevant. Specifically, this interrogatory calls for information that is not relevant to any condition at issue in this lawsuit.

14. Is Defendant Johnson & Johnson aware of the existence of any study conducted to determine whether Johnson's Baby Powder containing corn starch is effective in reducing or likelihood of developing diaper rash or its effects? If so please identify each such study by setting forth the identity of the individual(s) or entity responsible for conducting such study, whether such study has been published, where such study has been published and whether or not the results of the study have been subject to peer review.

RESPONSE: Defendant objects to this interrogatory as irrelevant. Specifically, this interrogatory calls for information that is not relevant to any condition or product at issue in this lawsuit.

15. State the name, address and title of the individual(s) employed by Defendant who are most knowledgeable concerning the refining processes and procedures employed by Defendant or defendant's suppliers of the talc contained in Johnson's Baby Powder.

RESPONSE: Defendant objects to this interrogatory as overly broad and vague. Defendant has had hundreds of employees involved in the production of Johnson & Johnson's Baby Powder of its 50+ year history. It is not possible to identify one person or even a small group of persons with complete knowledge of all aspects of production over the years. Furthermore, this interrogatory calls for information that is not likely to lead to the discovery of any evidence that is relevant to any issue in this lawsuit.

Subject to the above stated objections, individuals knowledgeable to this area would be Roger Miller, former President of Windsor Minerals, Inc. and Randy Corder, Quality Assurance, Johnson & Johnson.

These individuals may be contacted only through counsel for Johnson & Johnson.

01/10/01 13:10 FAX 973 380 9831

DRINKER BIDDLE SHANLEY

023/027

16. State the name, address and title of the individual(s) employed by Defendant who are most knowledgeable concerning the incidence of talcosis and/or pulmonary fibrosis among employees of Johnson & Johnson engaged in the refining talc of used in the manufacture of Johnson's Baby Powder.

RESPONSE: Defendant objects to this interrogatory as overly broad and vague. Defendant has had hundreds of employees involved in the production of Johnson & Johnson's Baby Powder of its 50 + year history. It is not possible to identify one person or small group of persons with complete knowledge worker related injuries over the years. Furthermore, this interrogatory calls for information that is not likely to lead to the discovery of any evidence that is relevant to any issue in this lawsuit. Subject to this objection, see those individuals listed in response to # 15, above.

17. Describe in detail all processes, procedures and testing performed upon the talc used in the manufacture of Johnson's Baby Powder to reduce or eliminate the existence of asbestos, tremolite or other contaminants in Johnson's Baby Powder.

RESPONSE: To the best of defendant's knowledge talc used in the manufacture of Johnson & Johnson's Baby Powder never contained asbestos in any form, or tremolite. Defendant's sources of talc were selected for their lack of contaminants and further, testing was performed over a significant number of years by outside laboratories which verified that defendant's talc sources did not contain asbestos or tremolite. Defendant objects to providing further information as overbroad and irrelevant. Plaintiff has made no claim of an asbestos-related illness.

18. Is Defendant Johnson & Johnson aware of the existence of any studies or tests conducted for the purpose of determining whether Johnson's Baby Powder containing talc contains any asbestos, tremolite or other contaminants? If so please identify each such study or test by setting forth the identity of the individual(s) or entity responsible for conducting such study or performing such testing, whether the results of such study or tests have been published, where such study or the results of such test(s) has been published and whether or not the results of the study or testing have been subject to peer review.

RESPONSE: Over a number of years, defendant had an ongoing process of testing its source talc for Johnson & Johnson's Baby Powder for asbestos, tremolite or other contaminants. This testing was performed by outside laboratories both McCrone and R.J. Lee. For a significant period of time this testing was directed by Ian Stewart, a former employer of McCrone. Mr. Stewart is a consultant for defendant and may be contacted only through its counsel.

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DRINKER BIDDLE SHANLEY

024/027

Defendant-objects to providing further information as it is overly broad and irrelevant. Plaintiff has made no claim for an asbestos-related illness.

19. Has Johnson & Johnson ever received notice of any claim(s) made by any individual other than Plaintiff, Theresa Krushinski who claimed or alleged that they developed talcosis and/or pulmonary fibrosis through exposure to Johnson's Baby Powder? If so, for each such claim set forth the date upon which Defendant received notice of such claim, the name and address of the claimant, and whether or not such claim resulted in litigation. If the claimant was represented by counsel, set forth the name and address of the attorney who represented the claimant, the name of the court in which such claim was venued, the caption of the action, the docket number or case number identifying such action and the identity of the attorney or attorneys who represented Johnson & Johnson in that action. If any employee gave deposition or trial testimony in connection with such action, set forth the name and address of the employee who testified, the date and place where such testimony was given and the name and address of the court reporter who recorded such testimony. Please attach a copy of the transcript of such testimony to your responses to these Interrogatories.

RESPONSE: Defendant objects to this interrogatory to the extent it calls for information irrelevant to any matter at issue in this lawsuit. Subject to the foregoing objections, defendant has been sued in the following cases.

**No. L 064208-83; Selby v. Johnson & Johnson Consumer Products, Inc.
California Superior Court, San Diego County - Filed 12-22-93**

**No. 670577; Gambino v. Johnson & Johnson Baby Products, Co.
Superior Court, New Jersey, Middlesex County - Filed 10-12-83**

20. If Defendant has had any lung tissue sample alleged by any individual to evidence the existence of talcosis or pulmonary fibrosis caused by Plaintiff's exposure to Johnson's Baby Powder subject to scientific analysis, set forth the name and address of the individual whose tissue sample was tested, the name and address of the individual who performed such testing, the date such testing was performed and the result of such testing. Please attach a copy of the results of such testing or analysis to your responses to these Interrogatories.

RESPONSE: Objection. Improper. The Judge in this case has ruled that the plaintiff is not entitled to this information unless or until an individual reviews tissues samples from the plaintiff and is identified as an expert.

21. If you contend that the risk of developing talcosis and/or pulmonary fibrosis through the use of Johnson's Baby Powder was known to the average or ordinary consumer set forth, in complete detail, all facts upon which you intend to rely to establish that the characteristics of talc are known to the average or ordinary consumer.

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DRINKER BIDDLE SHANLEY

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RESPONSE: Defendant objects to this interrogatory on the grounds that it is over broad, vague, and irrelevant. Plaintiff attempts to improperly shift the burden to defendant to prove that its product was safe. Subject to the foregoing objections, the normal and expected use of Johnson's Baby Powder poses no health risks.

22. If you contend that exposure to "highly refined cosmetic talc" poses a reduced risk of developing pulmonary fibrosis or talcosis set forth all facts and identify all studies upon which you intend to rely to establish this fact at the time of trial.

RESPONSE: Defendant objects to this interrogatory on the grounds that it is over broad, vague, and irrelevant. Plaintiff attempts to improperly shift the burden to defendant to prove that its product was safe. Subject to the foregoing objections, the normal and expected use of Johnson's Baby Powder poses no health risks.

23. If you contend that Plaintiff developed talcosis by exposure to talc other than through the use of Johnson's Baby Powder set forth in complete detail all facts upon which you rely to establish this contention.

RESPONSE: Defendant disputes the contention that plaintiff developed talcosis by exposure to talc produced by Johnson & Johnson. Further information will be provided in response to this interrogatory when discovery is completed.

24. Identify all individuals employed by Defendant, by name, address and job title who provided information necessary to respond to these Interrogatories and identify the individual, by name address and job title with Defendant, who Certified these Answers to Interrogatories on behalf of Defendants.

RESPONSE: Defendant objects to this interrogatory as over broad, harassing, and requests information subject to the attorney client, work product, and investigative privileges. Subject to the foregoing objection, these answers to interrogatories were compiled from numerous sources and the investigation by counsel.

25. If any individual employed by Defendant consulted in connection with providing Defendant's answers to these Interrogatories or provided information necessary to respond to these Interrogatories is licensed to practice medicine in this or any other state, or is a scientist with experience or training in the field of inhalation toxicology, set forth the name and address of such

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DRINKER BIDDLE SHANLEY

026/027

physician, whether such physician has been Board Certified in any area of medicine and attach a copy of the current curriculum vitae for such individuals.

RESPONSE: Defendant objects to this interrogatory as over broad, harassing, and requests information subject to the attorney client, work product, and investigative privileges. These answers to interrogatories were compiled from numerous sources and the investigation of counsel.

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DRINKER BIDDLE SHANLEY

027/027

CERTIFICATION

I am employed by Johnson & Johnson Consumer Companies, Inc. (JJCCI), a defendant in the above-entitled action. The foregoing answers to interrogatories were prepared with the assistance and advice of counsel for JJCCI, upon whose advice and information JJCCI and I relied. The foregoing answers are true and correct to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I may be subject to punishment.

Nancy C. Musso

Dated: 5/23/00

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J&J-0162349

Exhibit 220

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN RE: ASBESTOS LITIGATION)

HORACE A DURHAM, SR., and)
DOLORES JANE DURHAM)

Plaintiffs,)

v.)

C.A. No. 05C-07-136 ASB

METROPOLITAN LIFE INSURANCE.,)
COMPANY, et al.,)

NON-ARBITRATION

Defendants.)

AFFIDAVIT

My name is John Hopkins. I hold a BSc (Batchelor of Science) degree with Honors in Chemistry & Biochemistry from the University of St Andrews, Scotland, UK. I also hold a PhD degree in Toxicology from the University of Dundee, Scotland, UK.

I am a Chartered Biologist, holding the Diploma, C Biol.

My academic background is in the field of Toxicology.

I make this affidavit based on my personal knowledge gained during my employment with Johnson & Johnson Consumer Products, Inc. (hereinafter referred to as "Johnson & Johnson" as described below and from a personal review of documents in the files of Johnson & Johnson during certain of the times I worked for the Company as well as information conveyed to me in the ordinary course of business by other employees of Johnson & Johnson.

Prior to joining Johnson & Johnson in 1976 I undertook some teaching to medical students followed by employment as a Toxicologist in the Pharmaceutical industry. I was a founder Member of the British Toxicology Society in 1979.

During the period 1976 -2000 I was in the employment of Johnson & Johnson.

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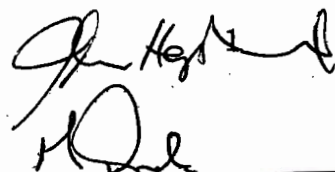


EXHIBIT
J&J-230

I was employed in the United Kingdom (1976-94), in the United States for the four years 1995-1998 inclusive and in France (1999-2000).

Since 2000 I am the President my own Company, Innovant Research. This is an independent Consultancy in the field of Toxicology, Product Safety and Risk Assessment.

For the whole of the period from 1976 onwards I have been familiar with the literature and debate as to talc safety. I am a Member of the UK Trade Association, CTPA Scientific Advisory Committee and the CTPA Talc Committee.

I am also familiar with the history and background of the sourcing, standards and specification of talc as used by Johnson & Johnson on a worldwide basis. During my employment for Johnson & Johnson in the UK, I was in regular contact with medical and scientific colleagues in the United States on all matter relating to talc safety.

Through my Company, I am a Consultant to Johnson & Johnson both in Europe and in the United States on safety matters, including talc safety, and still retain authorized copies of talc literature and information on talc usage within Johnson & Johnson.

This documentation includes summary of documented historical data and talc specifications.

Johnson & Johnson Talc History

1. Talc Sourcing:

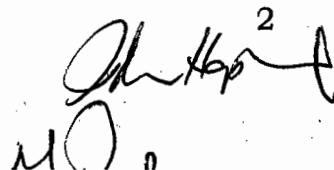
The purity of talc is based on its source. There are only a limited number on talc mines in the World that provide a grade of talc that meets the requirements of talc for pharmaceutical applications (Talc USP) and talc for cosmetic applications (compliance with the CTFA monograph).

Mines that include geological structures, other than pure talc are not suited as a source of Cosmetic and Pharmaceutical grades of talc.

From 1946 talc for Johnson & Johnson in the United States was sourced from the Italian mine at Val Chisone.

Italian talc was the sole source for Johnson & Johnson products until 1964.

From 1964 until 2002, talc was sourced by Johnson & Johnson in the United States from the Windsor mine in Vermont, USA.



2. Specification of Cosmetic Talc

The records indicate that as far back as 1949, there is documented evidence that the specification for Johnson & Johnson Cosmetic talc should be free from asbestos and asbestiform minerals.

Although asbestos was not known as a hazard in 1949, the presence of asbestos was even at that time, considered highly undesirable as the "feel" of its presence on the skin is regarded as unpleasant and cosmetically unacceptable.

Confirmation of the absence of asbestos on a historical basis has been reported in a Johnson & Johnson internal Report from 1966 that summarized the results of 13 samples of talc from the Company Museum, and dating from the period 1910 – 1964.

3. Audits of Talc Mines.

As a part of a program to ensure that the talc used in Johnson & Johnson products was free from asbestos, an independent geological audit of the talc mines both in Italy and in Vermont was conducted in 1972 by Professor Fred Pooley from the Department of Mineral Exploitation, University of Wales, UK.

Professor Pooley is considered a world class expert in talc mineralogy and geology. The audits included a systematic geological sampling of all areas of the mines, including the non-talc bearing areas.

The conclusion of the Audits was that for both of the Italian and Vermont mines, there was zero evidence of asbestos in the geology and mineralogy of the mines.

Additionally Professor Pooley examined a sample of talc dating from 1949, as used by Johnson & Johnson in the UK. It was reported that the quality had not changed.

4. Sampling of Talc

Since 1975, Johnson & Johnson has conducted a regular monitoring program of samples of talc from all mines supplying to affiliate Johnson & Johnson companies throughout the world. Although Italian talc was not used in the United States after 1964, it was used in Europe until 1999. The monitoring program included assay for asbestos, silica and quartz. Assay has been conducted by an independent external laboratory in the United States.

In addition, it has been a requirement of the Raw Material specification since 1975, for each batch of talc to be supplied to Johnson & Johnson to be free from asbestos and in compliance to the CTFA Talc Monograph. This has required the supplier to confirm purity of every batch supplied using state of the art techniques.



For the talc sources in use in the United States over the period 1955-2002, there has never been an instance of asbestos contamination.

5. Conclusions

It is my considered expert opinion that based on:

1. An absence of asbestos contamination in historical talc samples,
2. An in-house raw material specification requirement, dating from at least prior to 1949, for absence of asbestos in talc,
3. No evidence of asbestos in the mineralogy and geology in the talc mines supplying Johnson & Johnson in the United States and
4. No evidence of asbestos contamination in each production batch sampling as certified by the suppliers, from the period 1975 -to date,

It may be concluded that there has never been asbestos contamination of the talc used by Johnson & Johnson in the United States from the period in question, 1955-2002.



John Hopkins. BSc, PhD, C Biol.

Duly sworn before me
by John Hopkins on
19th September 2006



RICHARD W. S. DRAKE

NOTARY PUBLIC



PENNINGTONS
Newbury House
20 Kings Road West
Newbury
Berkshire RG14 5XR UK
Telephone 01635 571000

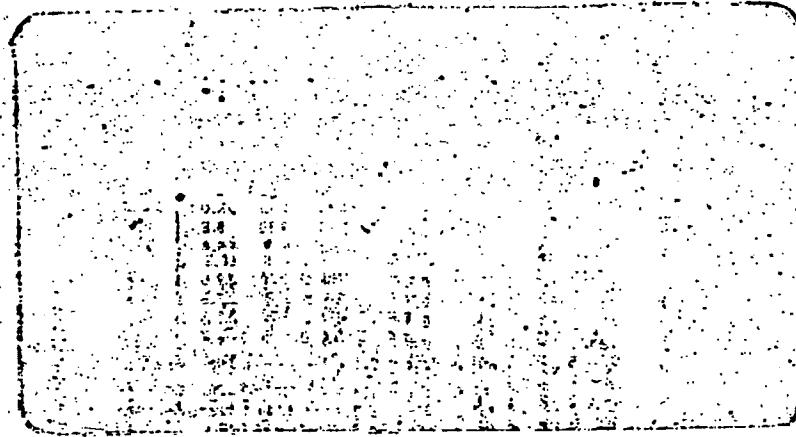
Exhibit 221

3

EXHIBIT
J&J-586

Protective Order

JNJAZ55_000000087



DEPARTMENT OF
MINERAL EXPLOITATION

UNIVERSITY COLLEGE
CARDIFF

AN EXAMINATION OF ITALIAN MINE
SAMPLES AND RELEVANT POWDERS

This document represents the completion report of the Italian mine samples and other powders supplied by Johnson and Johnson, Cosham, Portsmouth, to the Department of Mineral Exploitation.

The persons involved in the examination of the material reported here were:

Mr. J. Lightfoot

Mr. G.A. Kingston

Dr. F.D. Pooley

Received: 8th September
1972

REPORT OF INVESTIGATION OF ITALIAN MINE
SAMPLES AND RELATED POWDERS

Introduction

Talc is hydrated magnesium silicate ($Mg_3Si_4O_{10}(OH)_2$) which can occur in a number of forms. In its compact form it is known as stealite or soapstone. The form normally employed for toilet purposes is soft and very friable in character. It is mined in many parts of the world including the U.S.A., Canada, France, Italy, Norway and India, as well as several other countries. It occurs in both a flaky and lath like form and the chief deposits occur in altered magnesia-rich calcareous rocks such as dolomite, marble, and magnesian limestone. The purest talc deposits occur in association with dolomite and marble. Talc also occurs in altered basic rocks such as serpentines and again as thin beds in mica schists. Commercial talcs contain a number of related mineral impurities. They may include antigorite (hydrated magnesium silicate) magnesite or members of the magnesite-chalybite series of carbonates, dolomite (calcium magnesium carbonate), tremolite and actinolite (calcium, iron magnesium silicates), chlorites (magnesium aluminium iron silicates) and other minor minerals such as the sulphides and spinels.

The hand specimens examined in this report were collected at the Italian mine and do not represent an average collection of specimens of material being produced at the mine. The specimens were collected with the intention of sampling those areas with obvious non talc mineral inclusions. Specimens were retained which showed differences in physical appearance, i.e. fibrous, flakey, massive and powdery in texture. Specimens of ore in which colour variation was observed were also collected. In general the colour of the talc ore varied from grey through white to a light green colour. Obvious inclusions in the talc ore itself were retained and a careful search at the various sample locations in the talc seam was performed for fibrous amphibole minerals.

Specimens of the hanging and footwall were also collected to assess their mineral content as these were likely sources of ore contamination, although the method of mining which consisted of hand filling methods precluded any gross contamination of the ore.

The hand specimens have been, where possible, prepared for examination by the optical microscope and both polished blocks and thin sections of material have been employed. Representative fractions of all hand specimens have been reduced to powder form and subjected to powder X-ray diffraction examination. The representative powdered samples also form the samples for morphological examination by the electron microscope.

The list of samples obtained from the Italian mine are given in Tables 1 and 2 and throughout this report the samples are referred to by the preceding code number for each specimen.

The objective of the examination has been mainly to establish the major minerals which occur in association with talc at the Italian mine. In particular to look at the association of these minerals with the talc and especially those minerals which are of the same family as the commercial asbestos minerals, i.e. the amphiboles and serpentines.

The objective of the optical examination has been to establish textural and mineral relationship and not to quantify the phases occurring in each hand specimen. X-ray work has been aimed at establishing the minerals observed by optical means and to produce reference patterns for future investigation together with computed data from pattern measurement.

Electron microscope work has been selective in nature and performed on the finer fraction of the powdered specimens. Its aim has been to describe the morphology of the particles produced by comminution of the hand specimens and to investigate any obvious structural information which might be of use in identification of individual mineral particles.

Representative data obtained from the various examinations are included in the following report.

TABLE 1
LIST OF ITALIAN MINE SAMPLES

<u>Code No.</u>	<u>Description</u>
I.1.	Talc from footwall contact
I.2.	Sorting pieces (with obvious colour differences)
I.3.	Coloured talc (green)
I.4.	Face 10 sample with obvious amphibole inclusion.
I.5.	General ore
I.6.	Suspected Quartz sample
I.7.	Mica schist specimen
I.8.	Massive talc
I.9.	Grey talc 1st face
I.10.	Granular talc sample
I.11.	Carbonate and talc
I.12.	Footwall sample? Amphibolite
I.13.	Inclusion showing passage into talc bottom transit.
I.14.	Inclusion in talc seam face 4, middle of seam.
I.15.	Talc footwall contact
I.16.	Inclusion from face 1.
I.17.	Footwall rock sample
I.18.	Face 3 carbonate/talc sample
I.19.	Tremolite/quartz/talc sample
I.20.	Amphibole sample from Gianna level 1212
I.21.	Inclusion from face 2.
I.22.	Carbonate/talc sample
I.23.	Black gneiss 2 ft below talc seam
I.24.	Talc next to carbonate face 2.
I.25.	Footwall limestone
I.26.	Talc inclusions

Table 1 Continued

<u>Code No.</u>	<u>Description</u>
I.28.	Quartz/talc sample
I.29.	Sample 6 footwall
I.30.	Quartz/Carbonate/talc sample
I.31.	Black inclusion face 1
I.32.	Face 2 inclusion from base of talc
I.33.	Talc from lower left end of working
I.34.	Marble/tunnel wall
I.35.	Massive carbonate from rear end of working
I.36.	Grey talc specimen
I.37.	Carbonate in talc inclusion
I.38.	Pyrite/talc specimen
I.39.	5" - 0 pieces from crusher
I.40.	Platey talc
I.41.	Face 2, good specimen
I.42.	Face 1, coloured green (talc)
I.43.	Face 10, fibrous sample
I.44.	Face 1, pure talc?
I.45.	Face 1, good specimen
I.46.	Face 3, coloured specimen

TABLE 2

OTHER SPECIMENS EXAMINED

<u>Code No.</u>	<u>Description</u>
B1	Pure talc 1st face
B2	Greenish talc 1st face
B3	Talc 6 inches above footwall
B4	Talc from above inclusion
B5	Inclusion in talc
B6	Talc 2 ft above inclusion
B7	Section 2 ft above inclusion
B8	Pure talc 1st face
B9	Grey talc 1st face

Also examined

- 1) Batch shipments of ~~00000~~ talc
 - 2) Old samples of British powders.
-

OPTICAL EXAMINATION OF SPECIMENS I1 - I46

Thin and polished sections were prepared of the specimens of wallrock and, where possible, the talc ore.

The minerals which formed a major constituent in at least one of the sections were quartz, muscovite, talc, chlorite, (var sheridanite), calcite, garnet, and tremolite; the latter only occurred as a major constituent in section I19. Phases which were always minor or accessory were microcline, plagioclase, biotite, pennine, epidote, clinozoisite, hornblende, actinolite (section I7), rutile, and opaque constituents pyrite, pyrrhotite, and chalcopyrite.

The identification of the minerals in the sections of these specimens was based on the optical characteristics of the minerals in transmitted and reflected light, both under plane polarised light (PPL) and crossed nicols (XN), combined with the results of the X-ray diffraction study of the crushed hand specimens. In some cases material was extracted from the sections and examined in R.I. liquids as in determining that the most common chlorite mineral in these specimens is a variety called sheridanite having a R.I. ω equivalent of 1.590 ± 0.005 and a birefringence of $0.012 - 0.014$. Similarly much of the muscovite was nearly uniaxial with a R.I. of 1.600 corresponding to the variety phengite, an abnormally siliceous muscovite. In the case of talc its confident determination optically is difficult since its optical properties are identical to muscovite. However, it was found that the common "feathery" form of the talc combined with the invariable occurrence of minute transparent inclusions (suspected to be silica) in the talc producing a 'dusty' appearance in thin section and a greenish colour in hand specimen, enabled talc to be distinguished from muscovite. Talc also exhibited slightly higher order interference colours in general. Where talc was only an accessory mineral to muscovite, as in some of the wallrock samples, then it could not be distinguished with certainty.

In the following pages (no. 7 to 48) the Italian specimens are systematically described as regards their mineral composition and mode of intergrowth. Numerous photomicrographs taken under PPL and XN are provided with the description to mainly illustrate the rock textures which, it is hoped, will provide information useful in the comminution of particularly the talc ore samples, and also displays the non occurrence of asbestiform amphiboles in the talc ore.

Specimen I1

Specimen I1 consisted of several pieces of wallrock with one piece displaying the talc/footwall contact. One polished section was made of the talc/footwall contact and one thin section of the wallrock alone.

The wallrock is a schist which in thin section displayed a segregation of the main minerals into thin lenticular bands composed, as in Figure 1, of long tabular aggregates of intermixed muscovite (var. phengite) and chlorite (var. sheridanite), and granular quartz exhibiting a polygonal grain boundary structure. Accessory rutile occurs as orientated inclusions in the chlorite and muscovite, and also opaque constituents which in polished section were identified as dominantly pyrite metacrysts with minor pyrrhotite. Some subhedral porphyroblasts of plagioclase also occur.

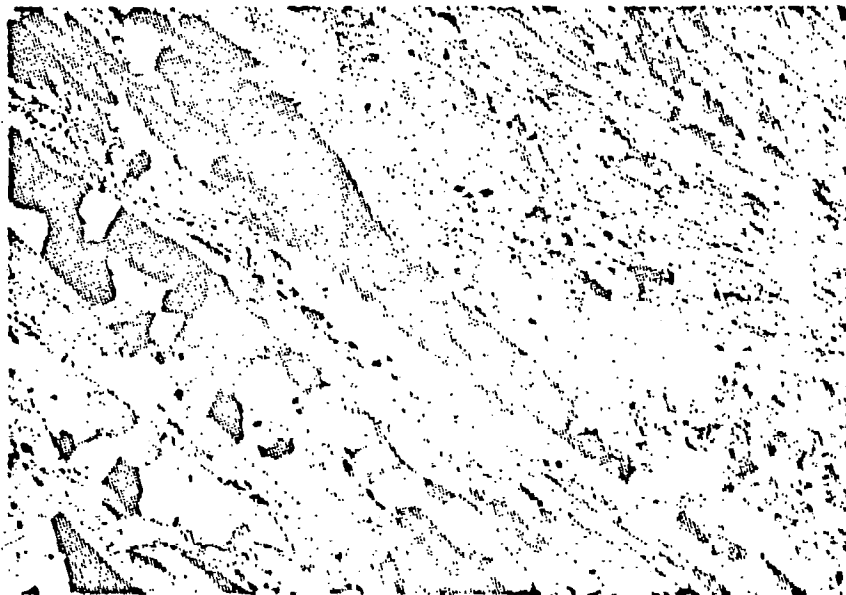


Fig. 1. Photomicrograph, X 40, of thin section of wallrock I1 under crossed nicols. A schist of quartz (granular white-black), muscovite (lamellar yellow-blue), and chlorite (lamellar white-blueish grey).

Specimen I3: 'coloured talc'

The minerals composing this specimen are major talc and chlorite (var. sheridanite) with the talc content much greater than chlorite, together with accessory garnet, rutile, and an unidentifiable finely dispersed phase occurring as minute transparent inclusions along the cleavage planes and grain boundaries of the talc and imparting a dusty brown appearance to the talc in thin section and a greenish colour in hand specimen. The talc occurs as medium grained feathery aggregates which are in places 'dusty' and grade into 'clean' transparent aggregates which are free of any inclusions. It appears that some retrograde metamorphic process has caused the inclusions to be removed or incorporated into the talc

minor chlorite is dispersed in the talc matrix as small lenticular and globular fibrous aggregates. Rare garnet, possibly a member of the ugrandite series because of its anisotropy, occurs as subhedral porphyroblasts.

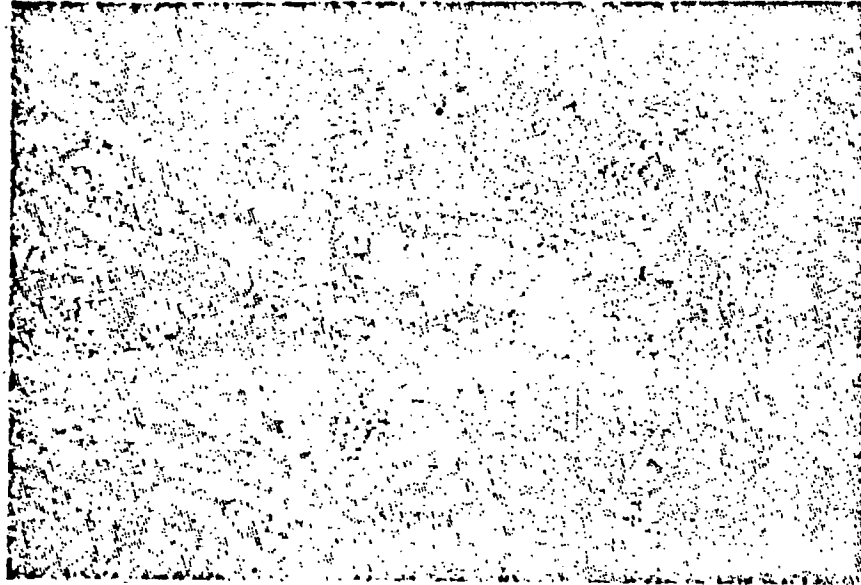


Fig. 2. Photomicrograph, X 24, of thin section of 'coloured talc' specimen I3 under crossed nicols. Dominantly talc (yellow-blue interference colours) showing murky brownish black patches due to presence of fine unidentifiable inclusions.

Specimen I5: general ore

A coarse aggregate of curving foliaceous and feathery crystals of talc displaying evidence of shearing and translation twinning. As in specimen I3, dusty inclusions of a transparent mineral with a general prismatic habit occurs dispersed in the talc. As before, but to a lesser extent, the talc is cleansed of these inclusions along zones associated with deformation and translation twinning, and it appears that the inclusions have either been converted to talc (as in the conversion of tremolite to talc by low temperature CO₂ metasomatism) or incorporated into the talc structure as a result of retrograde deformation metamorphism. Rare small subhedral garnet porphyroblasts also occur.



Fig. 3. Photomicrograph, x 24, of thin section of 'general ore' specimen I5 under crossed nicols showing the texture of the talc, and the 'murky' inclusion-rich talc compared to the clear inclusion-free talc.

Specimen I6

Specimen I6 consists of a very coarse aggregate of interlocking anhedral magnesite grains which exhibit strongly irregular and angular penetrating grain boundaries. The magnesite is characterised in thin section, Fig. 3a, by its marked change in relief and perfect rhombohedral cleavage in plane polarised light, and very high order interference colours, Fig. 3b, under crossed nicols.

Intergranular pockets of fine grained foliaceous and radiating prismatic crystals of talc together with rare chlorite (var. sheridanite) occur. In places the prismatic clusters of talc appear to have formed at the expense of the magnesite, perhaps as a result of a retrograde thermal metamorphism with its formation being ascribed to a reaction between the magnesite and silica. One subhedral porphyroblast of plagioclase feldspar occurs in the thin section.

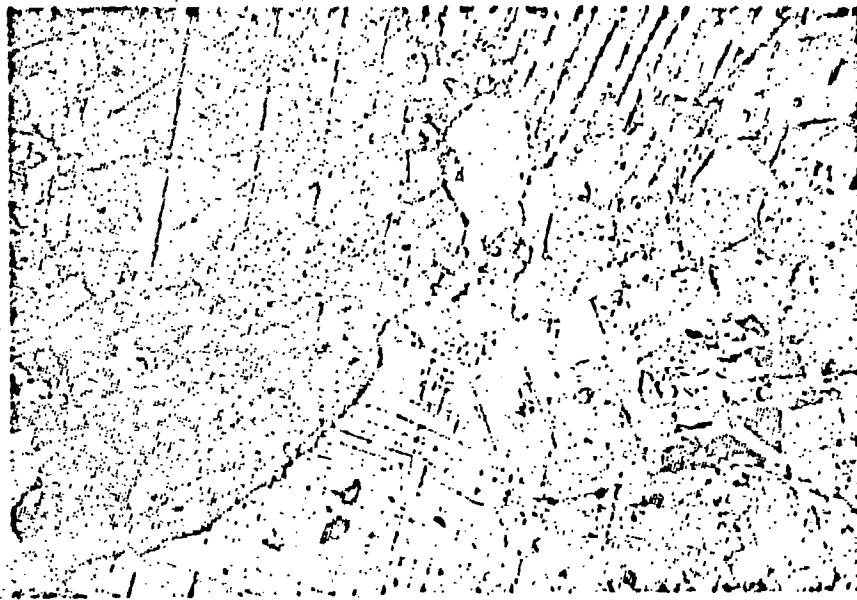


Fig. 3a. Photomicrograph, x 24, of thin section of specimen I₆ under plane polarised light, consisting dominantly of magnesite with minor talc and rare chlorite.

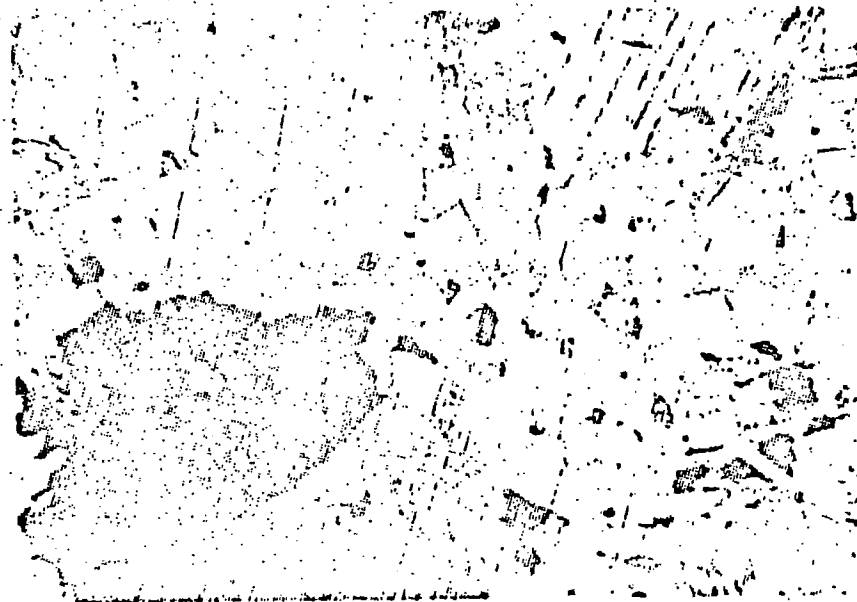


Fig. 3b. Photomicrograph of thin section of specimen I₆, mag x 24, under crossed nicols showing the occurrence of small equigranular and prismatic crystals of talc penetrating and interstitial to coarse anhedral magnesite.

Specimen I7

This specimen of wallrock is a quartz-muscovite-garnet schist (Figs. 4a, 4b, and 4c) containing some accessory actinolite, brown hornblende, talc and rare biotite.

The muscovite (var. phengite) forms long lenticular bands showing a preferred orientation in a matrix of interlocked equigranular quartz grains displaying strongly irregular grain boundaries. Large euhedral porphyroblasts of garnet, forming one of the major phases, are dispersed throughout the rock.

Accessory subhedral tabular and rhombic sections of actinolite (colourless to bluish green pleochroism) occur orientated parallel to the schistosity. The actinolite also occurs as rims to euhedral grains of rhombic and tabular outline which may have originally been brown hornblende but now are pseudomorphed by what appears to be a mixture of talc, chlorite and residual hornblende. Some talc is present as small pockets within the muscovite layers but this identification is based on the form, the lower refractive index and the occurrence of dusty inclusions. The colour, birefringence etc. of the talc is otherwise the same as muscovite.

In polished section the main opaque accessory mineral is pyrrhotite occurring as subhedral laths lying parallel to the schistosity. Traces of chalcopryite also occur, and some rutile rods mainly as inclusions in the garnet porphyroblasts.



Fig. 4a Photomicrograph of polished section of I7 showing pyrrhotite (white), garnet (light grey), and muscovite-quartz (darker grey). Very dark to black areas are pits in the surface.



Fig. 4b. Photomicrograph, mag. x 40, of thin section of I7 consisting of garnet, muscovite and quartz under plane polarised light.

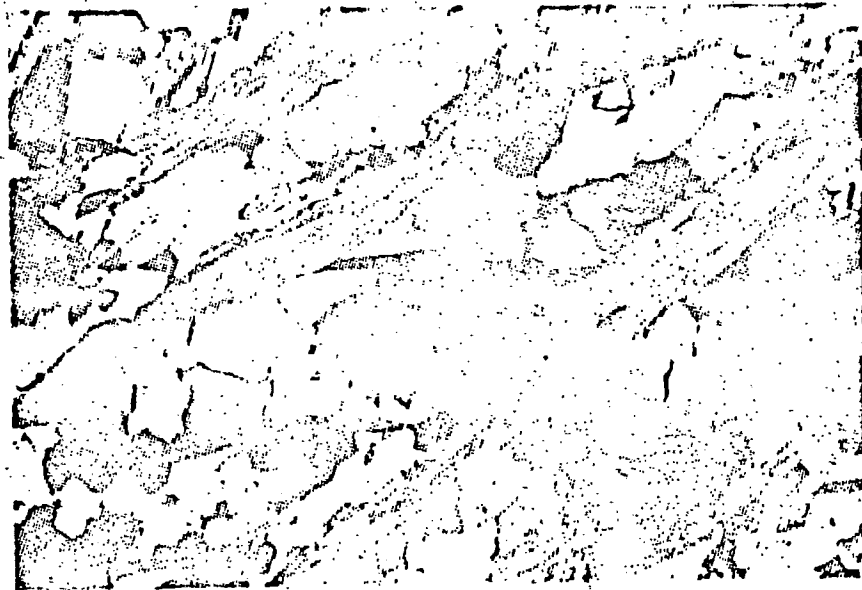


Fig. 4c. Photomicrograph, mag. x 40, of thin section of I7 under crossed nicols showing subhedral garnet (black), anhedral interlocking quartz (white-grey-black), and lamellar muscovite (coloured).

Specimen I8

In hand specimen I8 appears as a coarse aggregate of foliaceous talc varying in colour from white to greenish white. The general texture in thin section is of coarse foliated talc preferentially orientated and alternating with long lenses of a finer talc in which a preferred orientation appears to be absent as a result of shearing parallel to the schistosity. Minor chlorite (var. sheridanite) occurs as orientated laths intimately intergrown with the coarse talc, and as fibrous aggregates in the finer talc lenses. Rare anhedral garnet, possibly pyrope, occurs.

In thin section the talc which appears greenish in hand specimen is seen to be crowded with minute inclusions of a pinkish mineral occurring as rounded to thin tabular grains and having a lower refractive index than the talc. A grey-brown amorphous material is also present. This material together with the granular inclusions is presumably responsible for the greenish colouration of the talc in hand specimen. As in I3 and I5 the greenish talc has been cleansed of inclusions along planes parallel to the schistosity by some later metasomatic process or retrograde metamorphic process. This 'absorption' of the inclusions by the talc or removal of the inclusions does not effect the form of aggregation of the talc crystals. Boundaries between the clean transparent and 'murky' talc often transgress the schistosity and there is no change in the coarseness or mode of aggregation of the talc across such boundaries. X-ray diffraction of the transparent white talc and the translucent greenish talc revealed no differences and the composition of these inclusions is at the moment unknown. Figure 5, under crossed nicols, shows such a transgressive boundary between the clear and 'murky' or dusty talc.

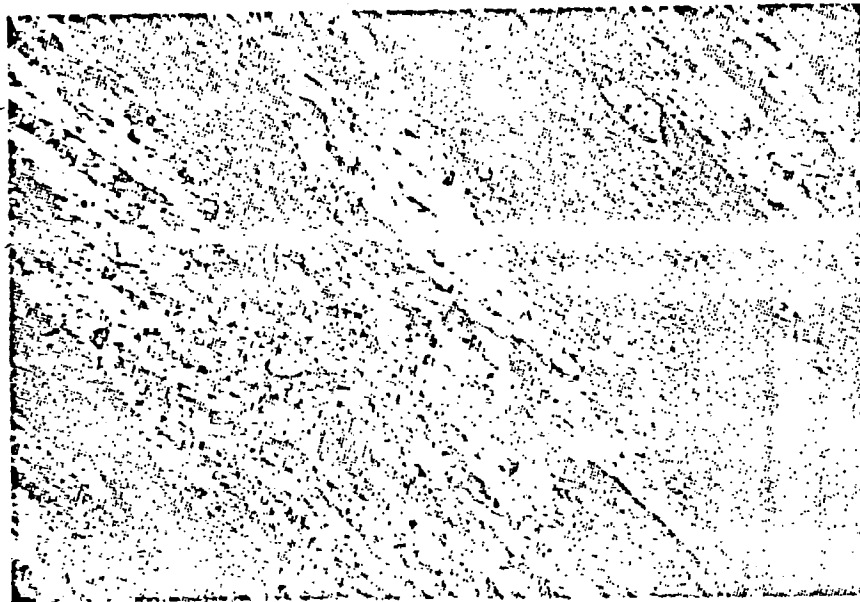


Fig. 5. Photomicrograph, mag x 24, of thin section I8 showing the nature of the talc intergrowth under crossed nicols, and the transgressive boundaries between clear transparent talc and the inclusion-rich 'murky' talc which appears greenish white in hand specimen.

Specimen I₉: 'Grey talc 1st face'.

In specimen I₉ talc and chlorite (var. sheridanite) are the main constituents. They occur intimately intergrown as long orientated foliaceous aggregates alternating with finer platy aggregates in which the talc and chlorite fibres are randomly orientated and which form lenses elongated parallel to the schistosity of the coarser foliaceous talc (Figs. 6a and 6b). As in previous sections the talc appears murky in parts due to the presence of minute unidentifiable inclusions.

The talc is also crowded with small irregular and rod-shaped grains of rutile. Rare subhedral porphyroblasts of garnet (possibly pyrope) also occur.

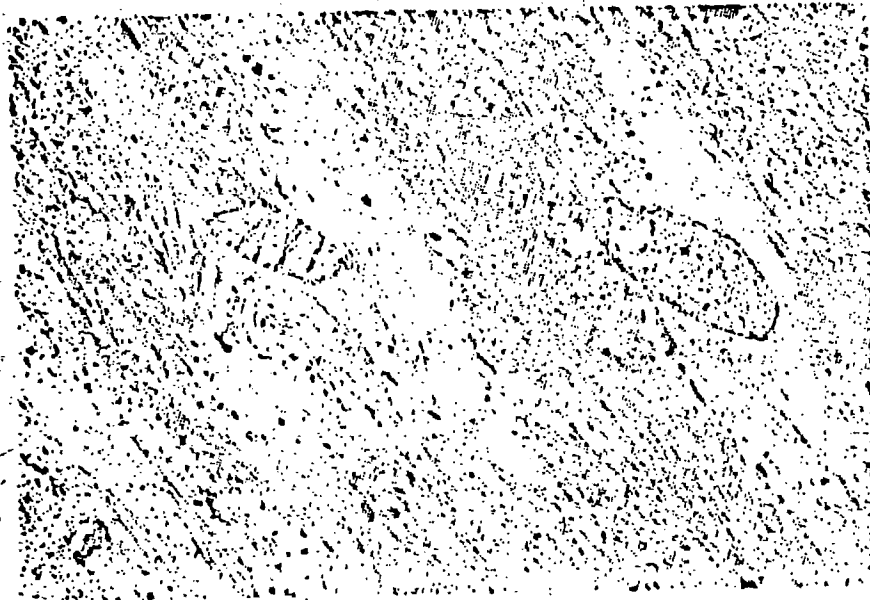


Fig. 6a Photomicrograph, x 40 mag, of thin section I₉ under plane polarised light showing subhedral garnet grains in an orientated foliaceous aggregate of talc and chlorite.

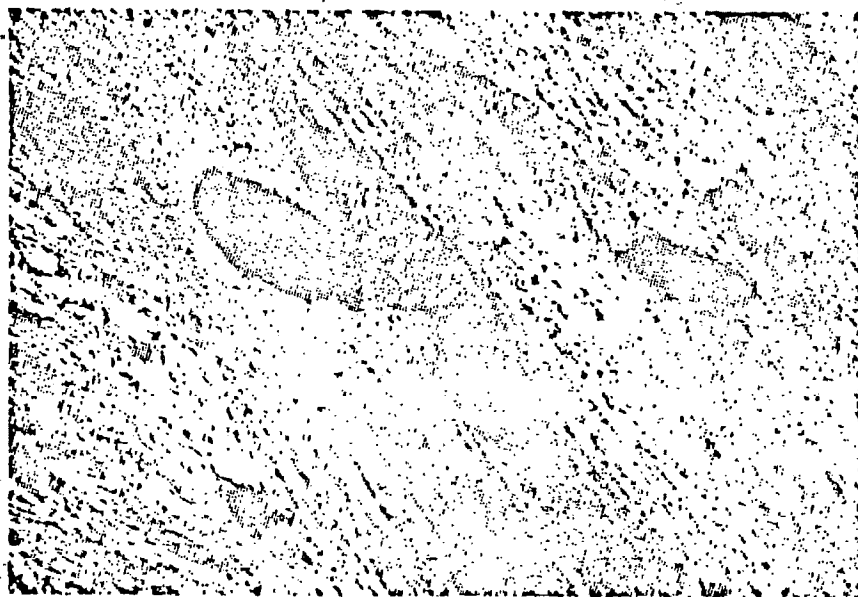


Fig. 6b. Photomicrograph, x 40 mag., of thin section I₉ under crossed nicols showing garnet (black) in a coarse matrix of foliaceous talc (bright interference colours) and chlorite (white to blue-grey interference colours).

Specimen I₁₀ and I_{10A}: 'granular talc'

Both I₁₀ and I_{10A} consist of an intergrowth of medium grained and randomly orientated major talc with minor chlorite (var. sheridanite) (Fig. 7). Some small porphyroblasts of garnet also occur scattered in the talc/chlorite ground mass. In this specimen the talc is not crowded with inclusions as is the case in most of the other samples.

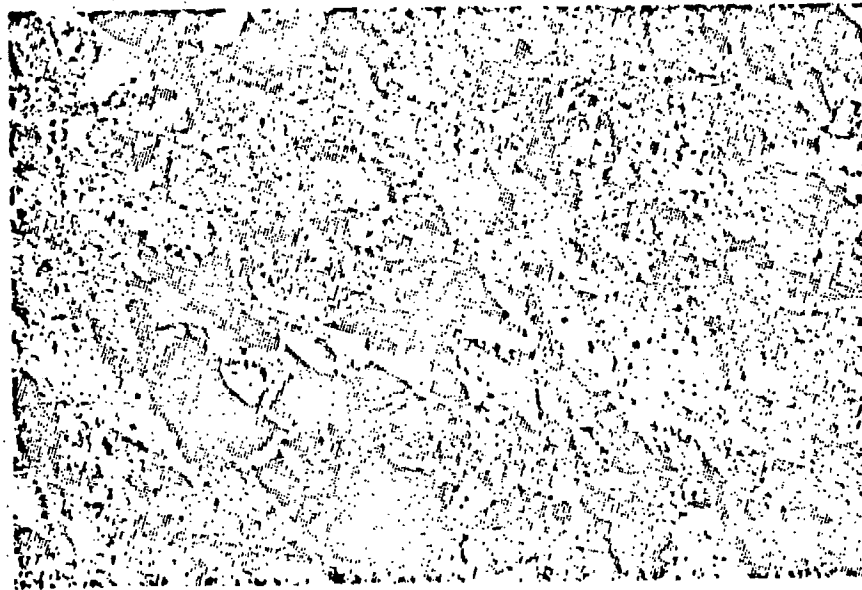


Fig. 7. Photomicrograph, x 40 mag., of thin section I₁₀, under crossed nicols, consisting of talc (blue and yellow interference colours), chlorite (white and greys), and garnet (black).

Specimen I₁₁ : 'carbonate and talc'

Specimen I₁₁ consists dominantly of a mosaic of coarse to fine grained anhedral interlocking magnesite grains with interstitial pockets of coarse to medium grained foliaceous aggregates of talc (Figs. 8a and 8b). The talc is crowded with near sub-microscopic inclusions of a transparent phase together with a brown amorphous material which causes the talc to appear dusty or turbid in thin section. Some fibrous chlorite (var. sheridanite) occurs as small pockets intergrown with the talc. Traces of rutile and pyrite occur.

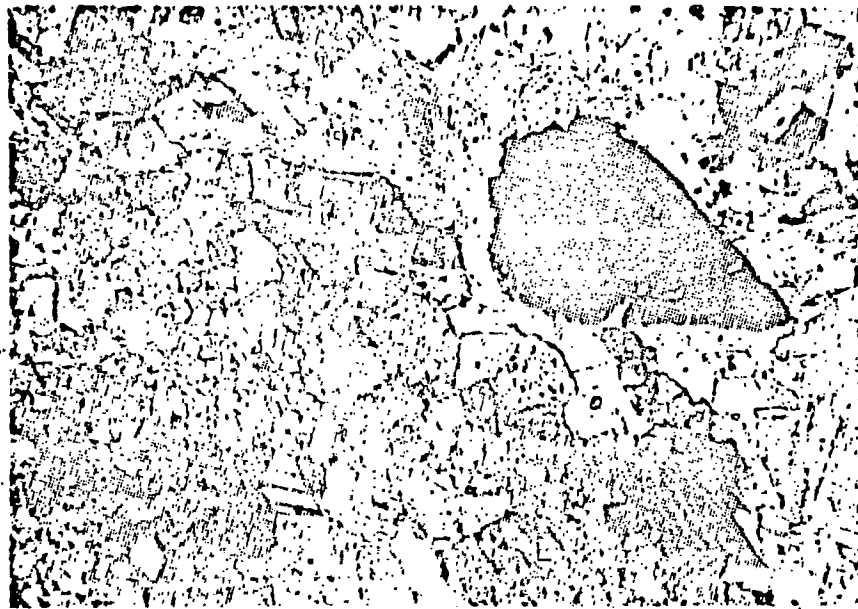


Fig. 8a. Photomicrograph, x 24 mag., of thin section I11 under plane polarised light showing a subhedra pyrite metacryst (black) in a matrix of compact granular magnesite with interstitial foliaceous talc (top centre).

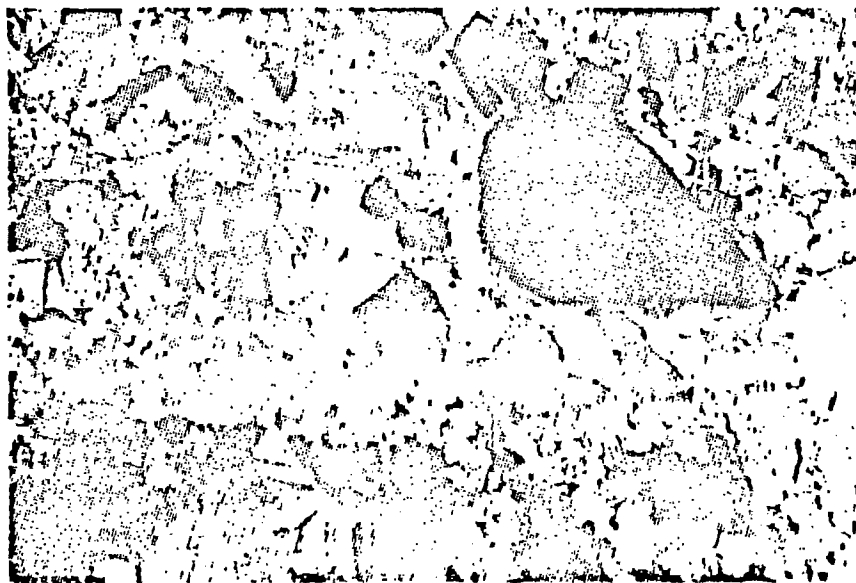


Fig. 8b. Photomicrograph, x 24 mag., of thin section I11 under crossed nicols showing a pyrite metacryst (black) in a granular magnesite matrix, with a foliaceous interstitial aggregate of talc (top centre).

Specimen I12

An aggregate of anhedral quartz as the main constituent with minor interstitial muscovite and green chlorite (var. pennine) Fig. 9. The long muscovite laths show a preferred orientation. Chlorite occurs in interstitial pockets as randomly orientated platy grains. Some epidote is present and a trace of magnesite.

The chlorite displays a pleochroism from light green to brownish-cream, and anomalous blue interference colours in some cases. However, most of the chlorite grains display lower second order to upper first order interference colours. Thus a range of chlorite composition is probably represented in the section.

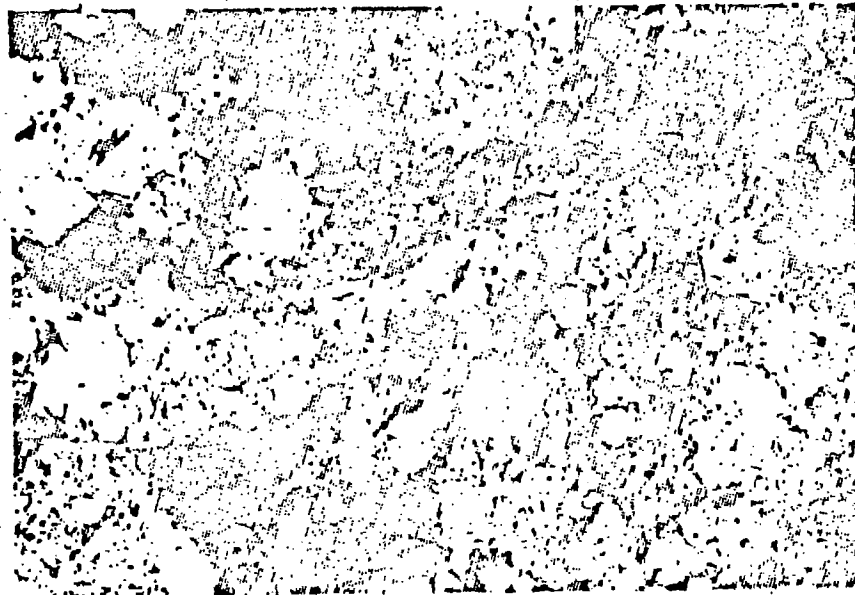


Fig. 9. Photomicrograph, x 40 mag., of thin section I12 under crossed nicols.

Specimen I13

This specimen consists of an aggregate of mainly medium grained platy to fibrous chlorite (var. sheridanite) and equigranular quartz. These two enclose ragged replacement residuals of calcite and subhedral metacrysts of pyrite with rare chalcopryite.

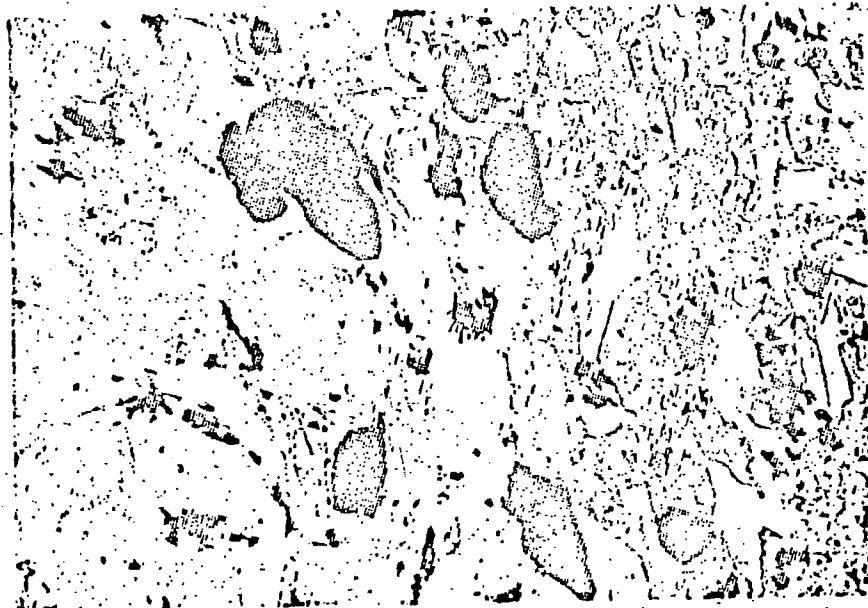
Photomicrograph, x 40 mag., of thin section
I13 under XN showing chlorite (fibrous white
and greenish-grey) and calcite (coloured)
enclosing subhedral grains of pyrite (black).
Equigranular grey grains are quartz.

Fig. 10b



Photomicrograph, x 40 mag., of thin section
I13 under PPL showing subhedral pyrite meta-
crysts (black) in a matrix of dominantly
chlorite and quartz with minor calcite.

Fig. 10a



Photomicrograph, x 24 mag., of thin section I₁₄ under XN of magnesite (greenish) and pockets of radiating lamellar talc (blue, purple, yellow)

Fig. 11b



Photomicrograph, x 24 mag., of thin section I₁₄ under PPL of coarse magnesite and intergranular pockets of 'dusty' and 'clear' talc.

Fig. 11a



This specimen is dominantly composed of very coarse grained magnesite enclosing minor amounts of talc and very minor chlorite (var. sheridanite). The talc and chlorite form pockets of radiating lamellar and foliaceous crystals as in Figs. 11a, 11b.

Specimen I₁₄

Specimen I15A

This specimen of wallrock is a garnet-muscovite-quartz schist with minor green chlorite, biotite, and rare talc and feldspar (Figs. 12a and 12b).

The garnet occurs as large (1-3mm diam.) porphyroblasts altered along irregular fractures to a mixture of greenish chlorite, biotite, and some feldspar, and enclosed in a matrix composed of orientated tabular grains of muscovite, forming elongated lenses, and alternating with 'mosaic' granular quartz containing randomly dispersed biotite and chlorite flakes.

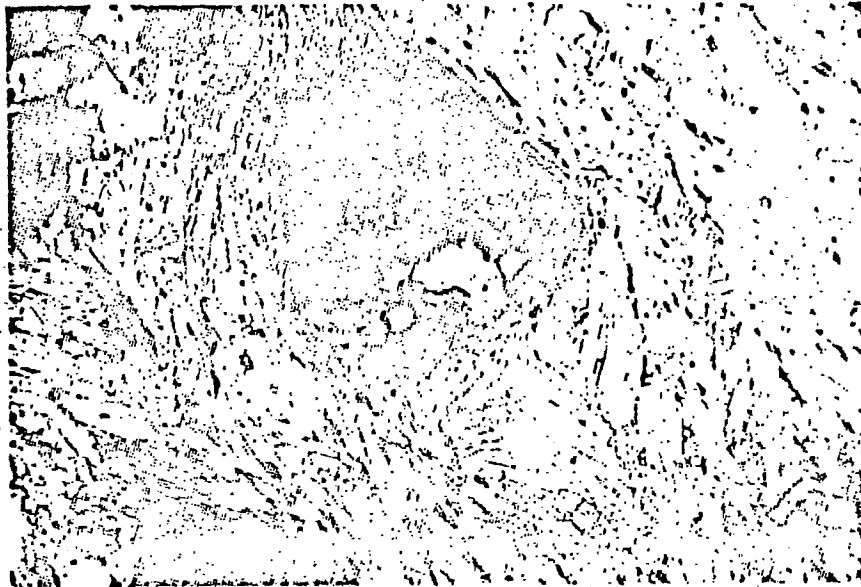


Fig. 12a Photomicrograph, x 24 mag., of thin section I15A UNDER PPL showing a large altered porphyroblast of garnet in a matrix of dominantly muscovite with minor quartz.

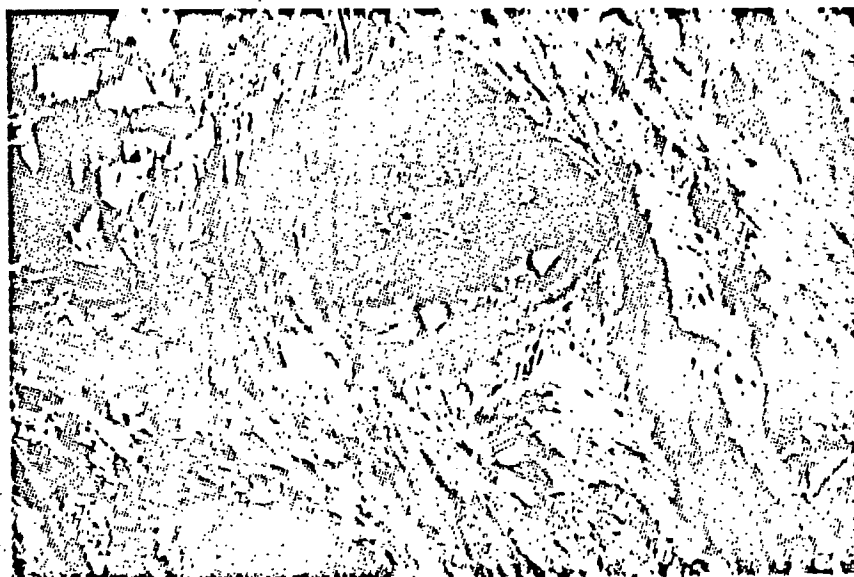


Fig. 12b. Photomicrograph, x 24 mag., of thin section I15A under crossed nicols. Garnet (black). Muscovite (dominantly purple interference colours). Quartz (white and greys).

Specimen I₁₅

This specimen is dominantly composed of chlorite (var. sheridanite) and quartz as orientated aggregates producing a schistosity. Very minor amounts of magnesite and talc occur. The talc occurs as thin laths intergrown with the chlorite (Fig. 13b).



Fig. 13a Photomicrograph, x40 mag., of thin section I₁₅ under PPL showing the irregular but preferred elongation of granular quartz segregations in a matrix of fibrous chlorite (var. sheridanite).

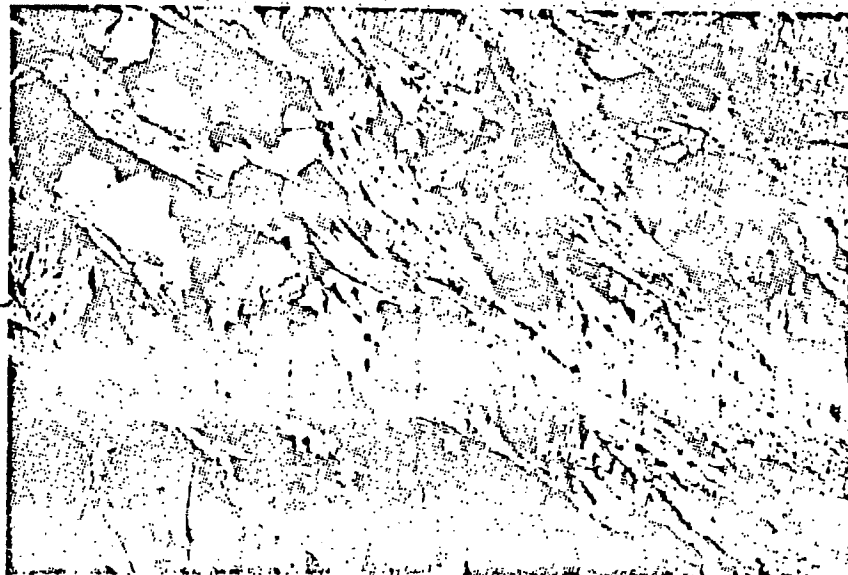


Fig. 13b Photomicrograph, x 40 mag., of thin section I₁₅ under XN, composed of chlorite (fibrous white, greenish grey, black), quartz (granular white-grey-black), and talc (blue, red, and yellow interference colours).

Specimen I16: 'first face inclusion'

This specimen is composed of a medium grained aggregate of dominantly chlorite (var. sheridanite) and quartz, with minor magnesite, clinozoisite, talc, and muscovite, and displaying a poor schistosity. Scattered euhedral to sub-hedral pyrite metacrysts occur as well as medium grained crystal aggregates of rutile associated with clinozoisite forming 'stringers' parallel to the general schistosity of the rock.

In the photomicrograph of figure 14a the brownish speckled areas are dominantly chlorite although in Figure 14b talc and muscovite are more apparent because of their interference colours.

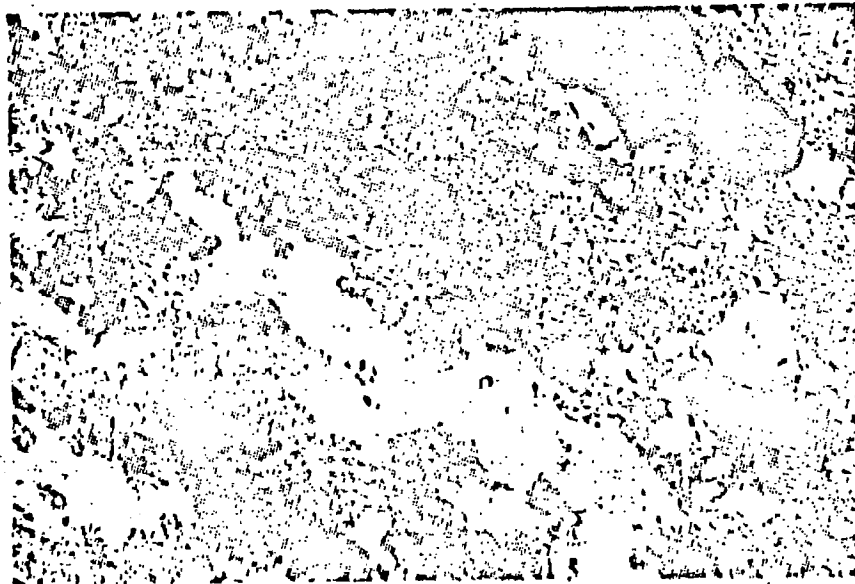


Figure 14a Photomicrograph, x 40 mag., of thin section I16 under PPL.

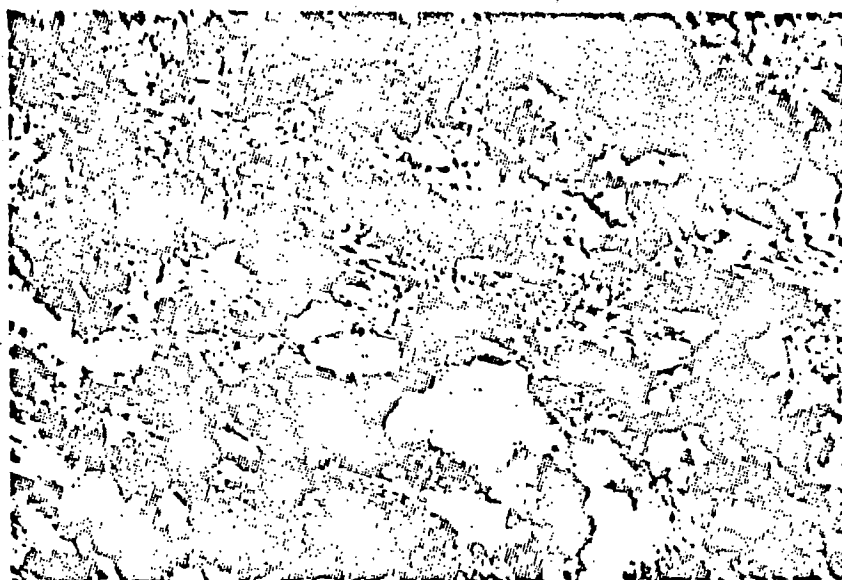


Fig. 14b Photomicrograph, x 40 mag., of thin section I₁₆ under crossed nicols. A chlorite - quartz rock with minor talc and muscovite, and accessory magnesite, clinozoisite, rutile and pyrite.

Specimen I₁₇: 'footwall'

This specimen of footwall rock is a muscovite-quartz-garnet schist consisting of long lenticular anhedral quartz aggregates. Both are enclosing fractured and altered euhedral porphyroblasts of garnet. Accessory sphene also occurs as well as serpentine-quartz pseudomorphs after a mineral displaying rhombic and tabular sections.

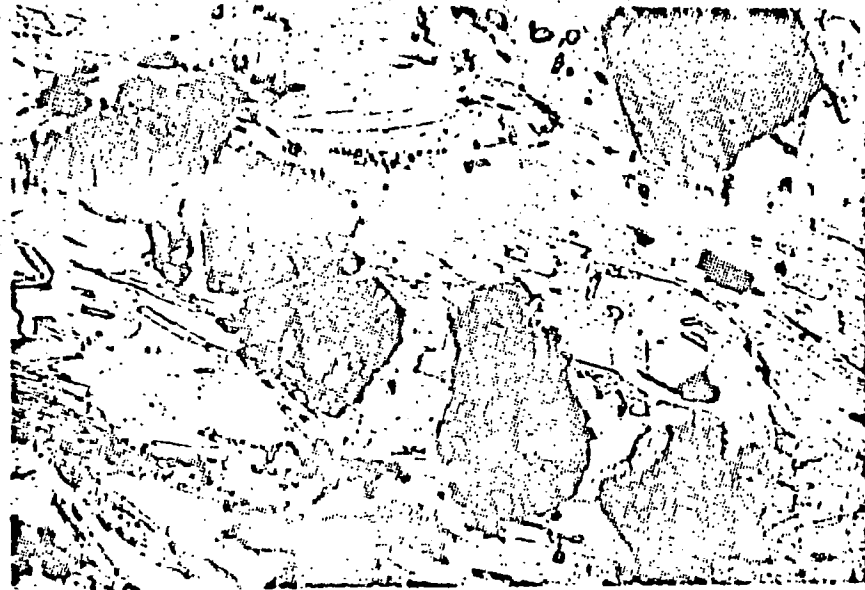


Fig. 15a Photomicrograph, x 24 mag., of thin section I₁₇ under PPL showing garnet euhedra in a matrix of segregated quartz and muscovite.



Fig. 15b Photomicrograph, x 24 mag., of thin section I₁₇ under XN. Garnet (black), quartz (white to grey), and muscovite (lamellar and coloured).

Specimen I₁₈: 'Face 3, carbonate/talc'

A coarse to medium grained aggregate of subhedral interlocking grains of magnesite with minor talc occurring as scattered small interstitial clusters associated with rare chlorite (var. sheridanite) and muscovite (Figs. 16a, 16b).

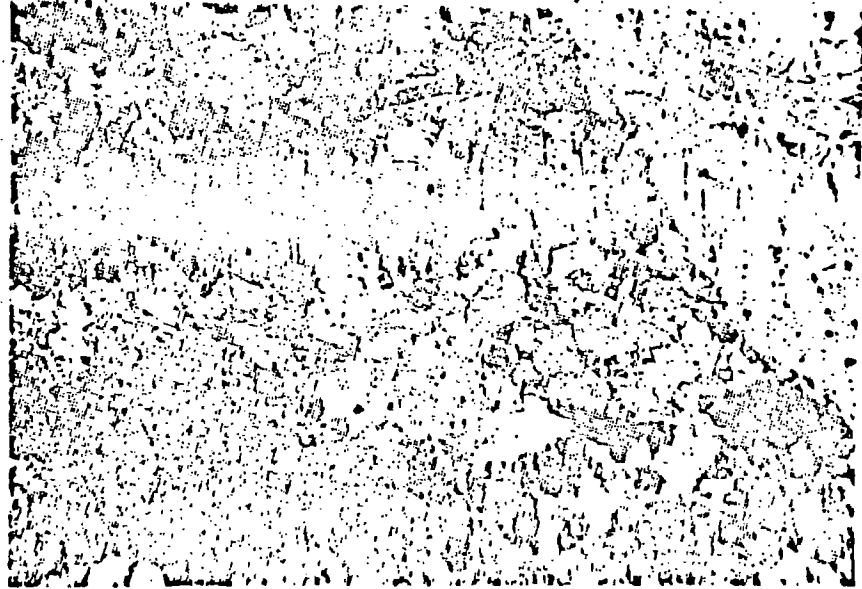


Fig. 16a Photomicrograph, x 24 mag., of thin section I₁₈ under PPL of granular magnesite with scattered tabular crystals and clusters of talc.

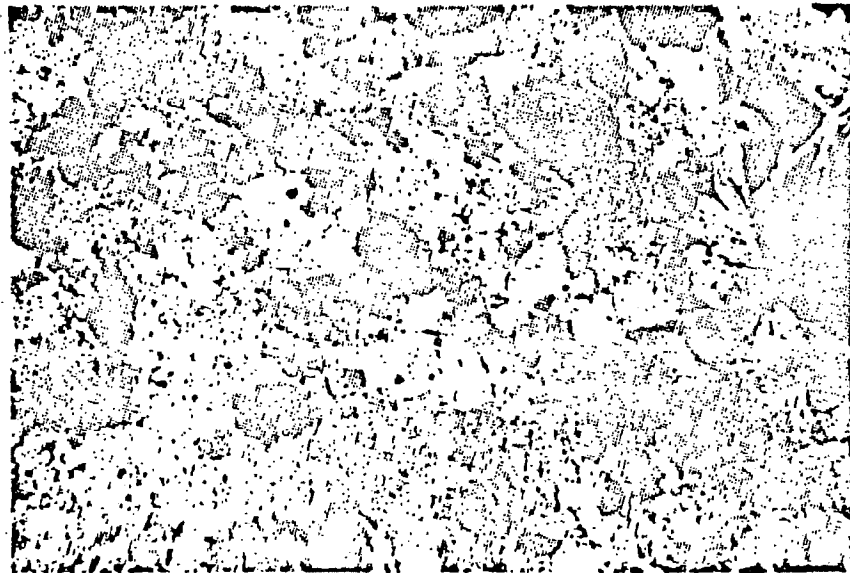


Fig. 16b Photomicrograph, x 24 mag., of thin section I₁₈ under XN of granular magnesite (high order interference colours, and scattered tabular crystals and clusters of talc (top right, coloured) and rare chlorite (white to blue-grey colours).

Specimen I₁₉:

This specimen consists of an aggregate of coarse grained anhedral magnesite intergrown with solitary bladed crystals and crystal aggregates of tremolite associated with minor amounts of fine fibrous talc and rare anhedral grains of quartz (Figs. 17a, 17b).

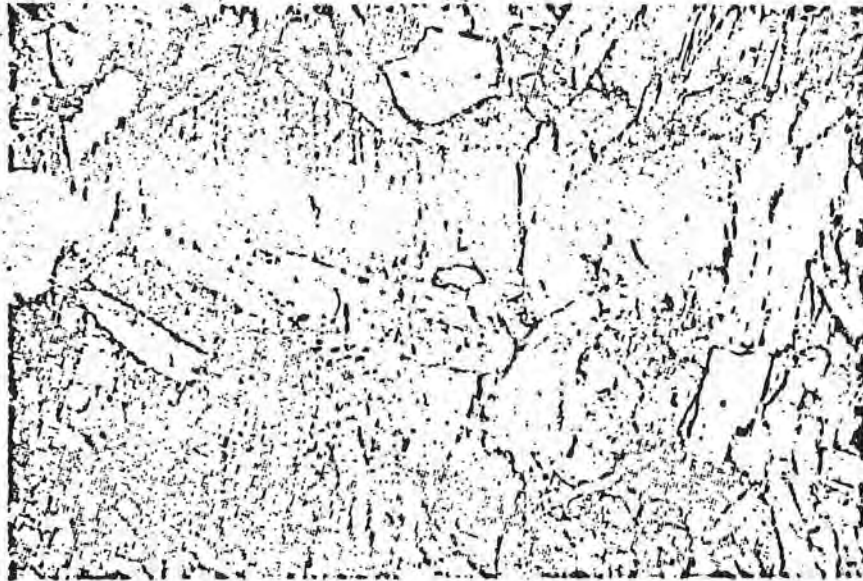


Fig. 17a Photomicrograph, x 24 mag., of thin section of I₁₉ under PPL, showing coarse bladed tremolite intergrown with very coarse grained magnesite.



Fig. 17b Photomicrograph, x 24 mag., of thin section I₁₉ under crossed nicols showing coarse bladed tremolite and anhedral coarse-grained magnesite with minor small fibrous aggregates of talc (top left).

Specimen I21: 'Inclusion, face 2'.

Specimen I21 is composed of a fine grained interlocking aggregate of anhedral magnesite, as the major constituent, associated with scattered laths and interstitial fine-grained fibrous aggregates of very minor talc (Figs. 18a and 18b).

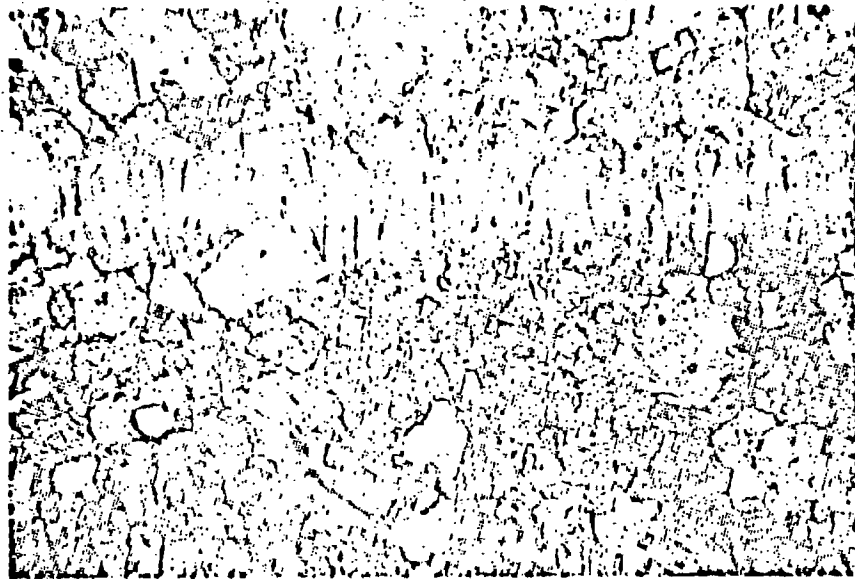


Fig. 18a Photomicrograph, x 24 mag., of thin section I21 under PPL. Magnesite with rare talc.

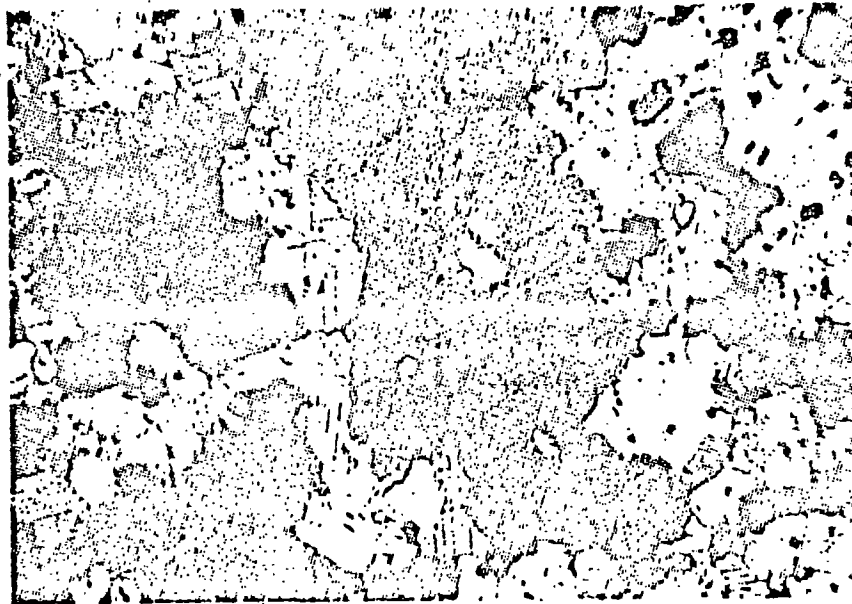


Fig. 18b Photomicrograph, x 24 mag., of thin section I21 under crossed nicols. Magnesite with rare talc.

Specimen I22

This specimen is dominantly composed of coarse subhedral to euhedral interlocking grains of magnesite associated with intergranular fibrous clusters of talc which often enclose smaller euhedral magnesite grains (Fig. 19).



Fig. 19 Photomicrograph, x 24 magnification, of thin section I22 under plane polarised light. Magnesite and interstitial aggregates of talc.

Specimen I23: 'Black Gneiss 2' below talc vein'

Specimen I23 consists dominantly of medium grained anhedral interlocking quartz as orientated bands enclosing large microcline anhedra and anhedral aggregates. Scattered platy aggregates of muscovite occur orientated parallel to the general direction of the quartz banding. Minor epidote and chlorite also occur (Figs. 20a and 20b).

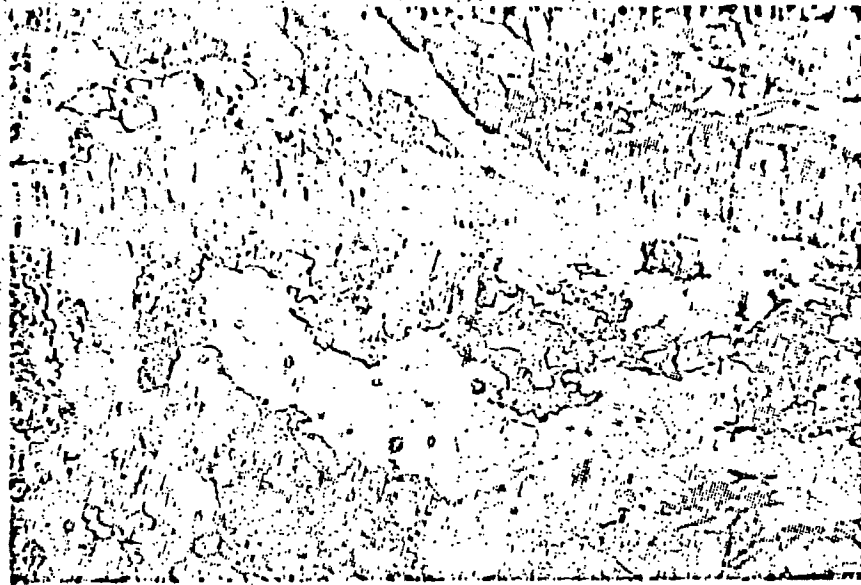


Fig. 20a Photomicrograph, x 24 mag., of thin section I23 under PPL. Quartz-muscovite-microcline gneiss.



Fig. 20b Photomicrograph, x 24 mag., of thin section I23 under XN. Quartz-muscovite-microcline gneiss.

Specimen I₂₄: 'Face 2, Talc next to carbonate'

This specimen of talc ore consists dominantly of coarse fibrous talc with minor chlorite (var. sheridanite) occurring as small lenticular fibrous aggregates within the main mass of talc (Figs. 21a and 21b). A few small subhedra of garnet are present. As in previous specimens there are two forms of talc present: (1) a talc that in thin section appears brown (Fig. 21a) under plane polarised light due to finely dispersed dusty inclusions of a transparent mineral and a brown amorphous material, (2) a clear transparent talc free of inclusions which appears to have been formed at the expense of the other by some metasomatic 'cleansing' process. Talc crystals in optical continuity can be seen to change sharply from 'dusty' brown talc to the clear talc.



Fig. 21a Photomicrograph, x 24 mag., of thin section I₂₄ under PPL. 'Dusty' and clear talc enclosing small lenticular aggregates of chlorite.

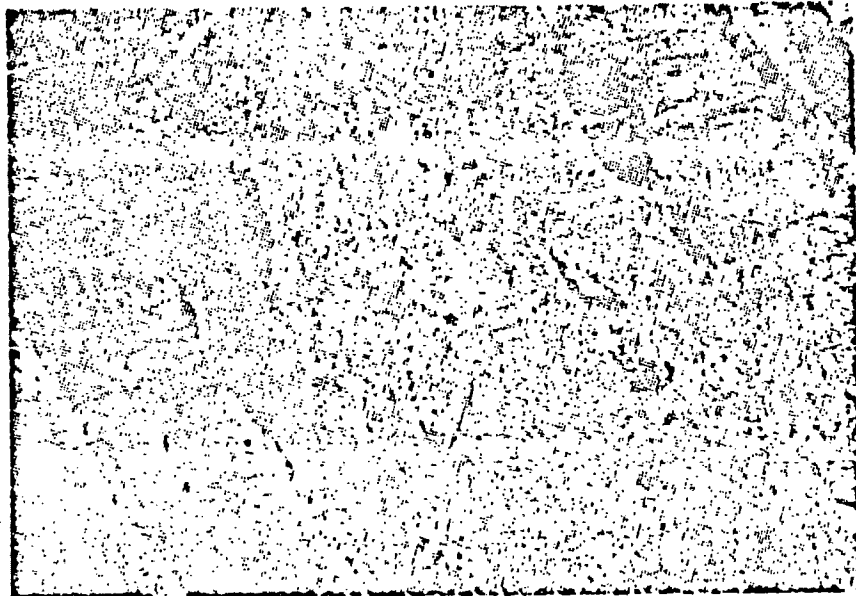


Fig. 21b Photomicrograph, x24 mag., of thin section I₂₄ under XN.

This specimen of footwall rock consists of an interlocking aggregate of medium grained anhedral quartz enclosing occasional large anhedral of microcline feldspar (Figs. 22a, 22b). Minor magnesite occurs as pockets interstitial to the quartz, and also scattered laths of muscovite. Green chlorite (pennine) and epidote occur in trace amounts.

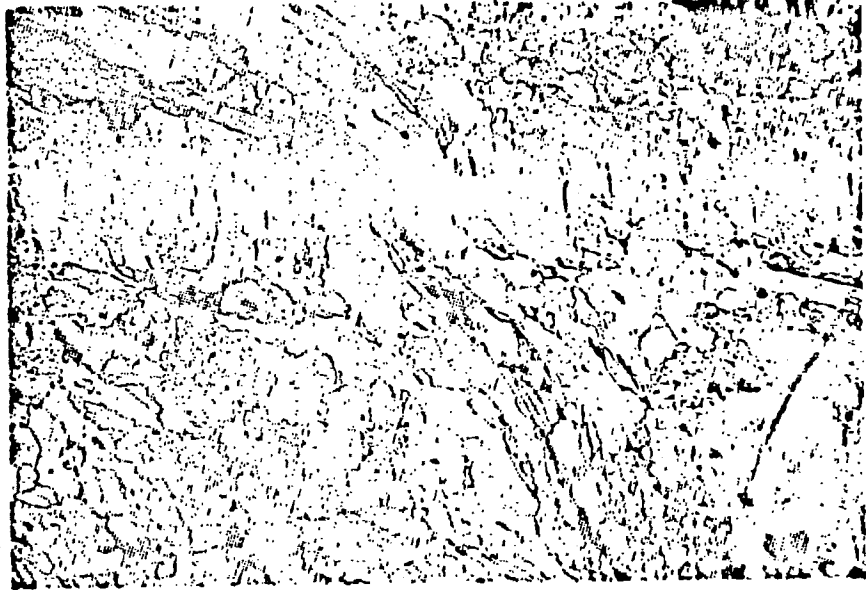


Fig. 22a Photomicrograph, x 24 mag., of thin section I25 under PPL; dominantly a quartz-microcline rock with minor muscovite and rare pennine and epidote.

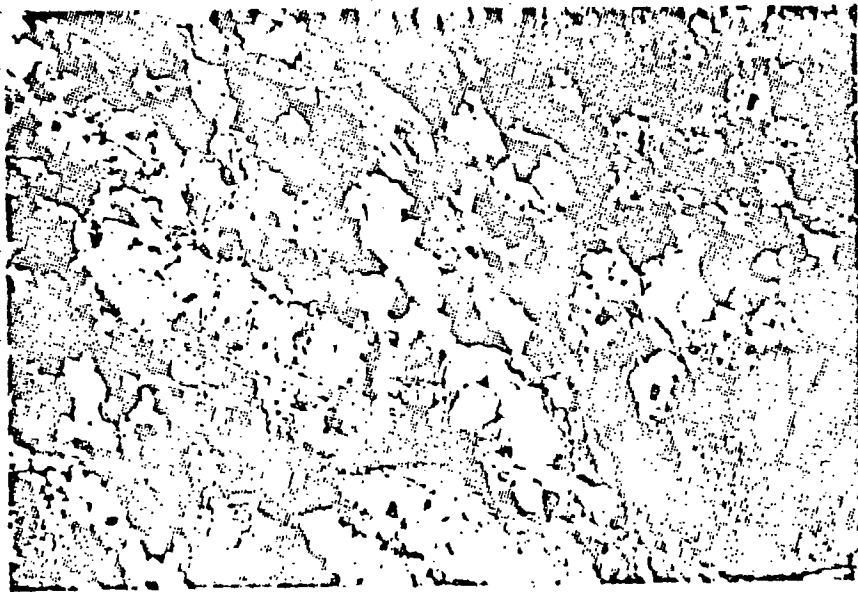


Fig. 22b Photomicrograph, x 24 mag., of thin section I25 under XN.

Specimen I26

This specimen contains chlorite, talc, magnesite and rutile. One part of the thin section consisted of a massive coarse fibrous and feathery aggregate of talc enclosing pockets of coarse magnesite. This texture graded into one which was dominantly fine grained chlorite (var. sheridanite) intimately intergrown with minor quantities of fibrous and platy talc (Fig. 23) as well as scattered small equigranular and rod-shaped rutile crystals.



Fig. 23. Photomicrograph, x 40 mag., of thin section I26 under crossed nicols showing minor talc (coloured) intimately intergrown with major chlorite.

Specimen I27

Specimen I27 is dominantly composed of quartz, chlorite (var. sheridanite) and talc (Figs. 24a and 24b). Thin lenticular bands of coarse feathery talc and chlorite alternate with anhedral granular interlocking aggregates of quartz. Scattered inclusions of rutile and epidote occur, as well as occasional large microcline anhedral.

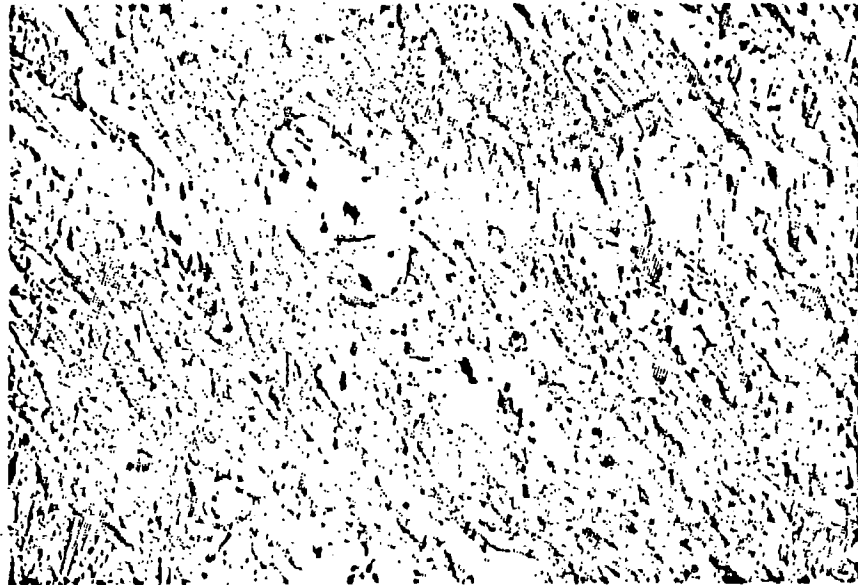


Fig. 24a Photomicrograph, x 40 mag., of thin section I27 under PPL, showing a fibrous and feathery aggregate of talc and chlorite enclosing anhedral segregations of quartz.

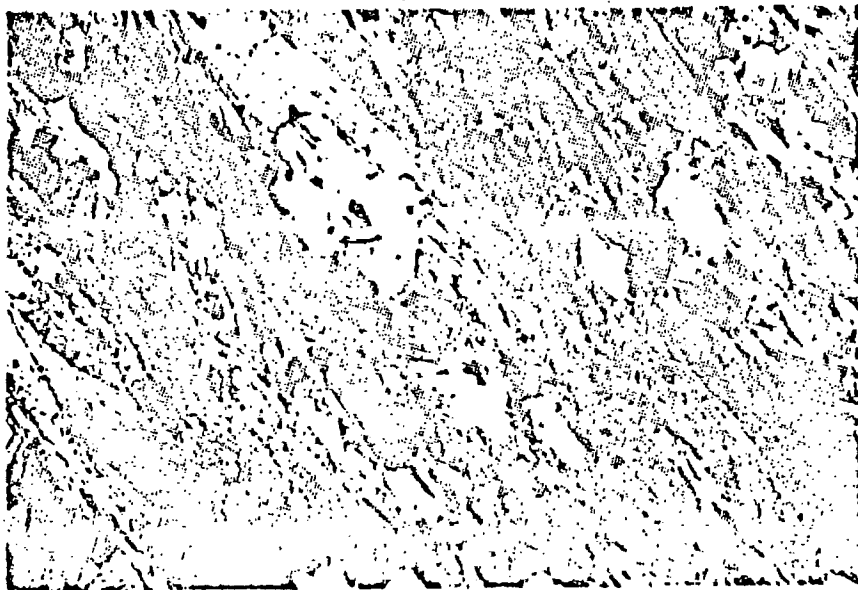


Fig. 24b Photomicrograph, x 40 mag., of thin section I27 under XN.

Specimen I29

Specimen I29 is a gneissic rock consisting of segregated bands of medium to fine interlocking anhedral quartz grains alternating with minor muscovite as orientated platy clusters and enclosing large microcline anheda. Some rare pennine and very rare epidote occur intergrown with the muscovite.



Fig. 25a Photomicrograph, x 24 mag., of thin section I29 under PPL, quartz, muscovite, and microcline (top left)

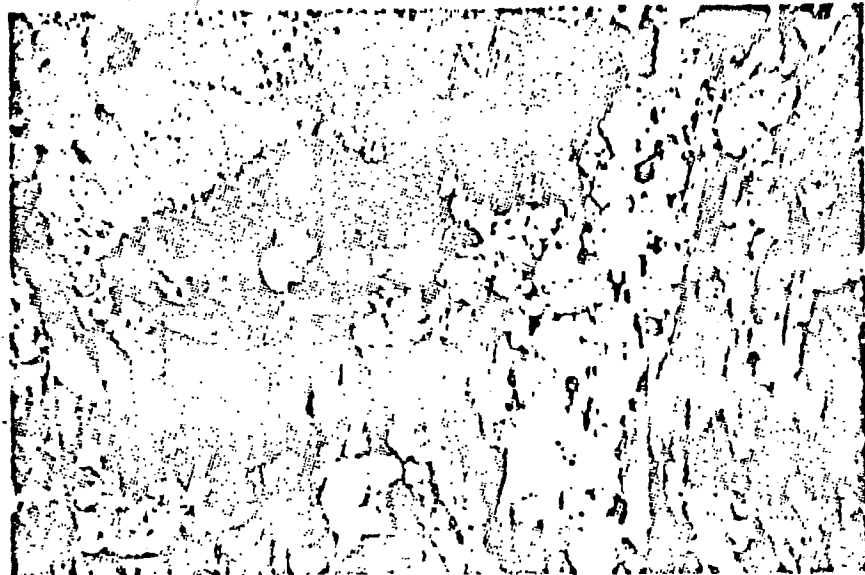


Fig. 25b Photomicrograph, x 24 mag., of thin section I29 under XN.

Specimen I31

Specimen I31 is a muscovite-quartz schist containing minor pennine, sphene and tremolite.

The rock is dominantly made up of coarse orientated lamellar segregations of muscovite intergrown with flakes of minor greenish brown chlorite (pennine) and enclosing euhedral to subhedral grains of sphene. Minor interlocking fine to medium grained quartz segregations occur alternating with the muscovite bands. Hexagonal sections of an amphibole, probably tremolite, occur dispersed in the muscovite matrix.

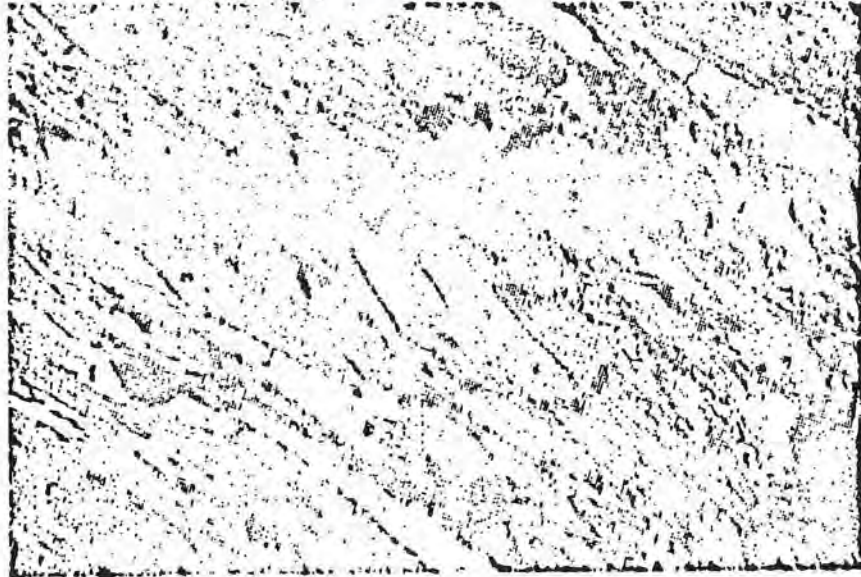


Fig. 26a Photomicrograph, x 40 mag., of thin section I31 under PPL; muscovite-quartz schist.

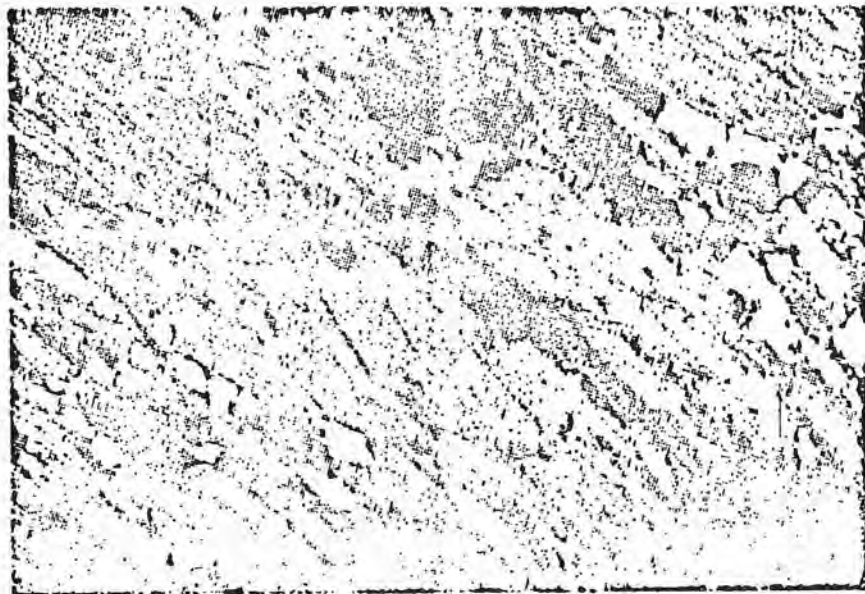


Fig. 26b Photomicrograph, x 40 mag., of thin section I31 under XN; muscovite-quartz schist.

Specimen I32

This specimen consists of coarse feathery lenticular aggregates of dominantly chlorite (var. sheridanite) intimately intergrown with minor amounts of talc (Figs. 27a and 27b).

Small inclusions of rutile occur along the boundaries (shear planes) between the chlorite aggregates and also along chlorite cleavage planes. Finely dispersed submicroscopic dusty inclusions of an unidentified phase similar to that found in talc occur in the chlorite.



Fig. 27a Photomicrograph, x 24 mag., of thin section I32 under XN. Feathery aggregates of sheared chlorite (white to greenish grey to black) with minor talc (coloured).

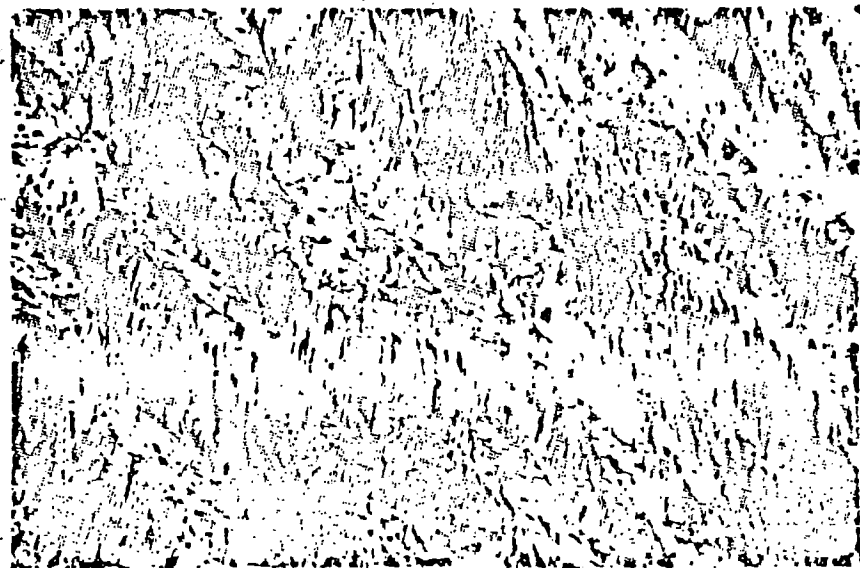


Fig. 27b Photomicrograph, x 24 mag., of thin section I32 under XN. Finer grained chlorite-talc mixture.

Specimen I33

This specimen of talc ore consists of a medium to fine grained randomly orientated intergrowth of dominantly talc with minor chlorite (var. sheridanite). The chlorite is intimately mixed with the talc (Fig. 28). Some pockets of coarse interlocking anhedral magnesite grains occur enclosed by the talc-chlorite matrix.

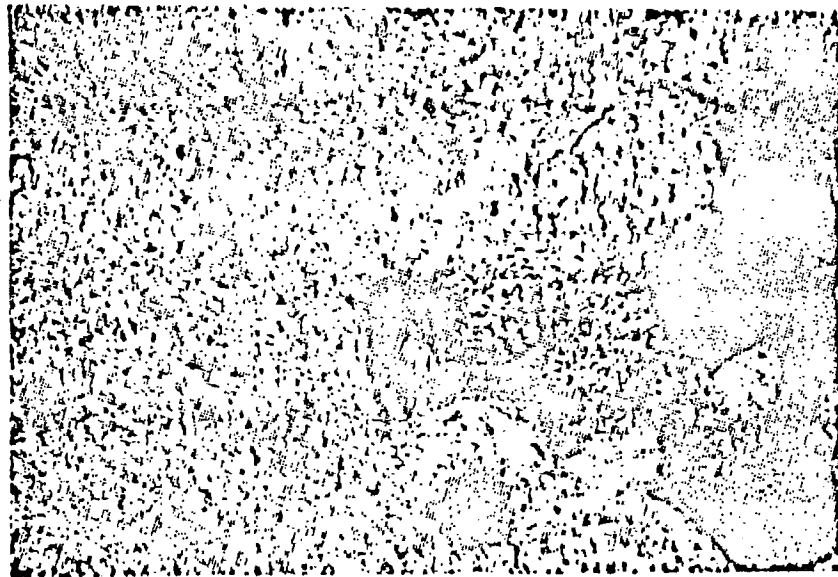


Fig. 28 Photomicrograph, x 24 mag., of thin section I33 under XN.

Specimen I35

This specimen consists dominantly of magnesite as a very coarse to medium grained interlocking aggregate of euhedral to subhedral grains. Minor tremolite occurs as long prismatic crystals forming interstitial clusters, and as solitary crystals penetrating the magnesite and along the grain boundaries of the magnesite. Minor chlorite (var. sheridanite) and rare talc occur associated with the tremolite segregations. (Figs. 29a, 29b).

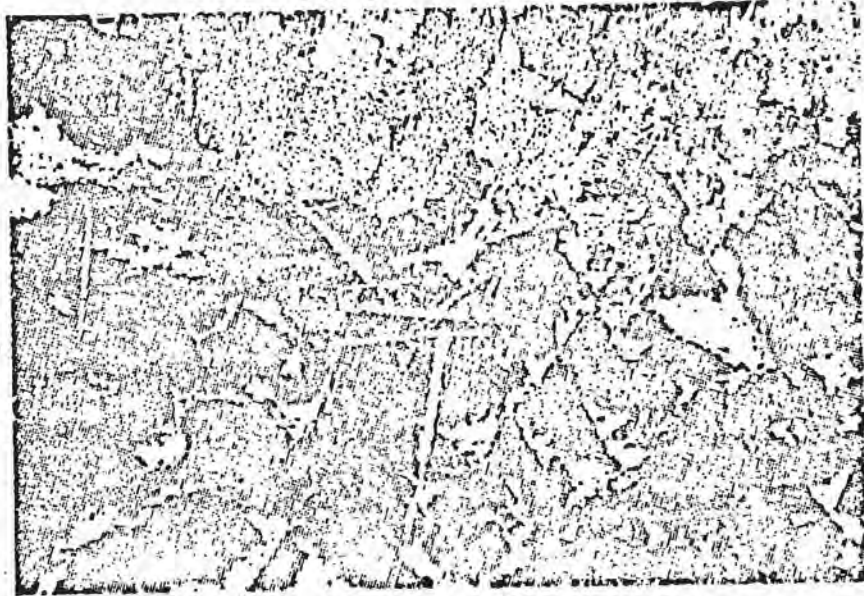


Fig. 29a Photomicrograph, x 24 mag., of thin section I35 under PPL. Magnesite-tremolite-chlorite-talc rock.



Fig. 29b Photomicrograph, x 24 mag., of thin section I35 under XN. Prismatic tremolite in magnesite in the extinction position.

Specimen I37

This specimen consists dominantly of magnesite with minor talc. The magnesite occurs as an aggregate of very large magnesite anhedral enclosed by finer grained subhedral magnesite which is intergrown with feathery intergranular clusters of talc (Fig. 30).



Fig. 30

Photomicrograph of thin section I37, x 24 mag., under XN showing the finer intergranular magnesite associated with small laths of talc (fibrous and coloured).

Specimen I39

This specimen is dominantly composed of talc forming coarse feathery aggregates intimately intergrown with minor finer grained chlorite (var. sheridanite) and containing fine disseminated inclusions of rutile. Occasional fine grained quartz as well as larger oval-shaped augen of quartz and rare garnet occur scattered throughout the talc matrix. The talc is for the most part crowded with inclusions, as in previous sections, but elongate areas of 'clean' talc occur as in Fig. 31a.

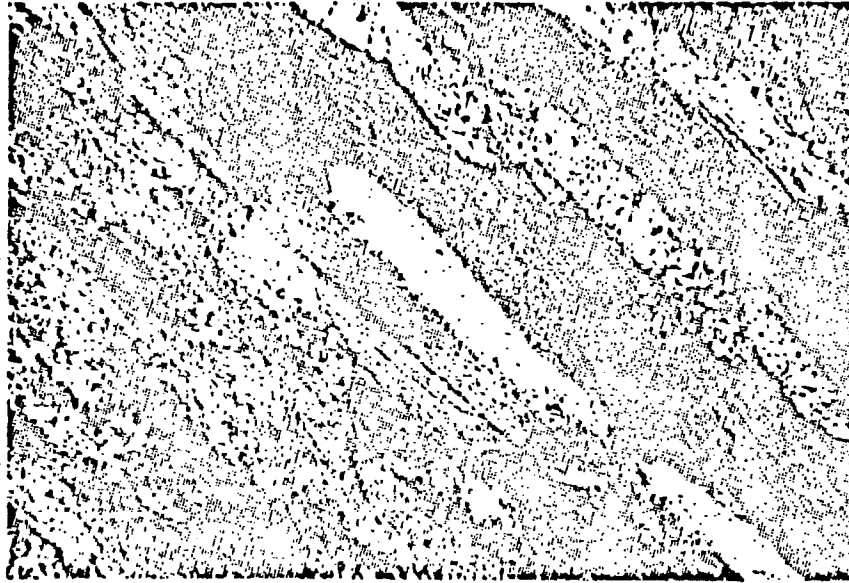


Fig. 31a Photomicrograph, x 24 mag., of thin section I39 under PPL.

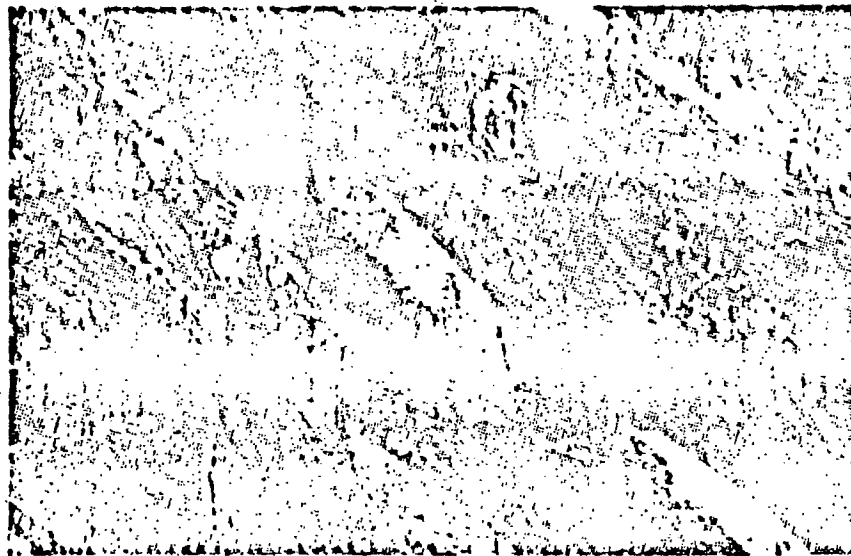


Fig. 31b Photomicrograph, x 24 mag., of thin section I39, under XN

Specimen I41

This specimen of talc ore consists of a coarse aggregate of feathery talc intimately intergrown with minor chlorite (var. sheridanite), and enclosing rare large porphyroblasts of subhedral garnet which occasionally contain long prismatic inclusions of tremolite (Fig. 32a).

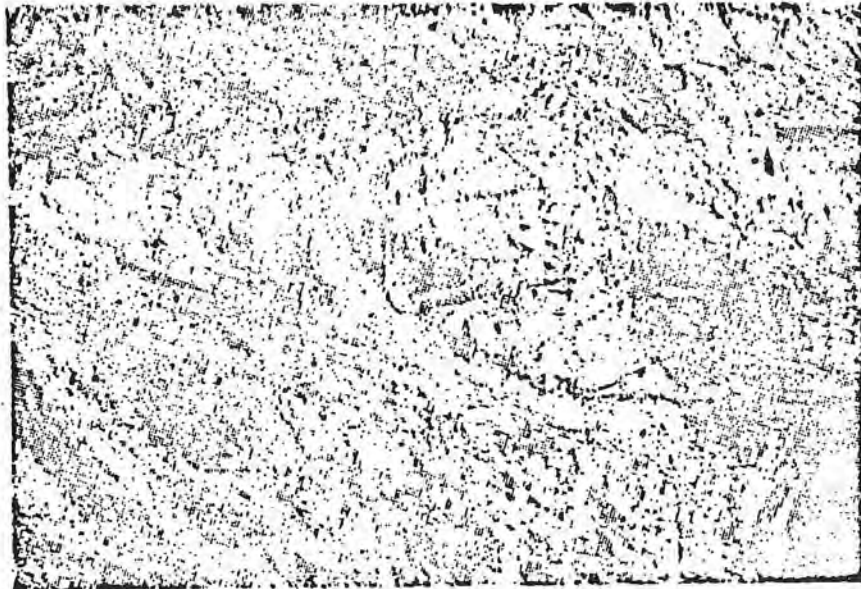


Fig. 32a Photomicrograph, x 24 mag., of thin section I41 under XN. Feathery aggregate of talc with garnet porphyroblast (bottom right, black).

Specimen I42: 'No.1 Face, green coloured'

Specimen I42 consists dominantly of an aggregate of fine grained fibrous chlorite (var. sheridanite) intimately intergrown with minor very fine grained talc as in Fig. 33.

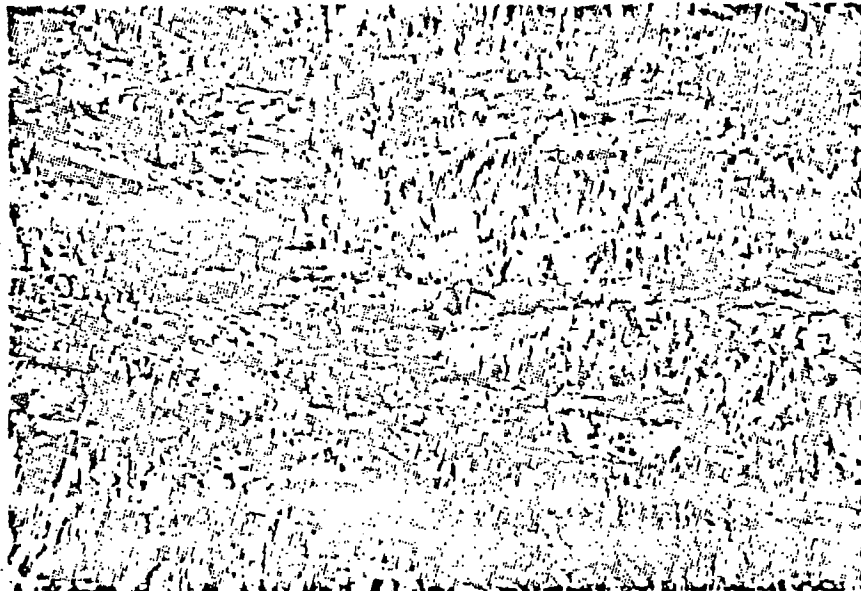


Fig. 33 Photomicrograph, x 24 mag., of thin section I42 under crossed nicols of chlorite (white, greenish grey, black), and fine grained talc (yellow).

Specimen I43: 'Face 10 fibrous sample'

Specimen I43 consists dominantly of chlorite (var. sheridanite), occurring in the form of a coarse sheared fibrous aggregate intimately intergrown with very minor talc as in Figure 34.

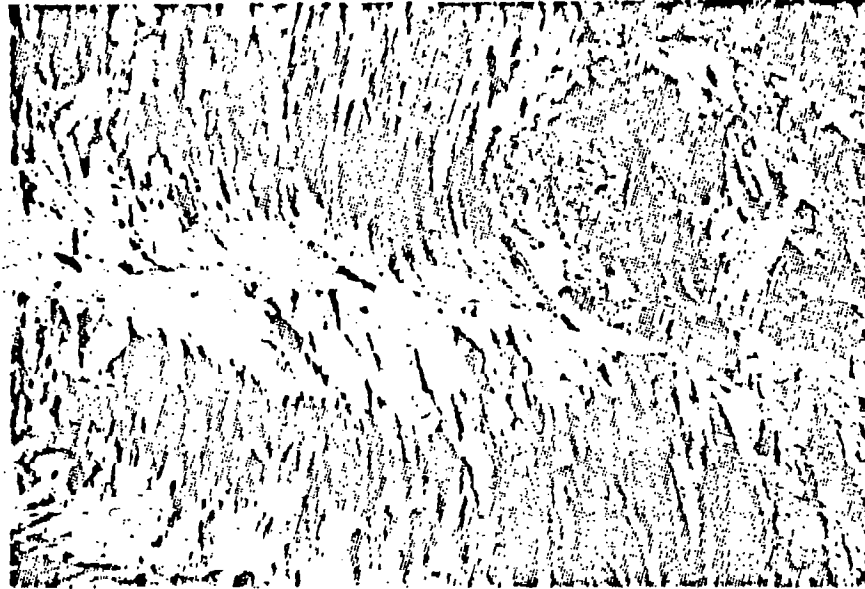


Fig. 34 Photomicrograph, x 40 mag., of thin section I43 under crossed nicols showing deformed fibrous chlorite (white-greenish grey-black) intergrown with platy and prismatic crystals of talc (coloured).

Specimen I43A

As for I43 the specimen consisted dominantly of chlorite (var. sheridanite) with very minor talc. The 'cross fibre' type texture found in I43 and produced by shearing at right angles to the schistosity was absent in specimen I43A.

Specimen I44: 'First face pure talc'

A coarse aggregate of lamellar talc showing a preferred orientation and enclosing augen of what appears to be an intimate intergrowth of quartz and serpentine (Fig. 35). Both talc crowded with fine unidentified inclusions and 'clear' talc are present. See also description for I45.

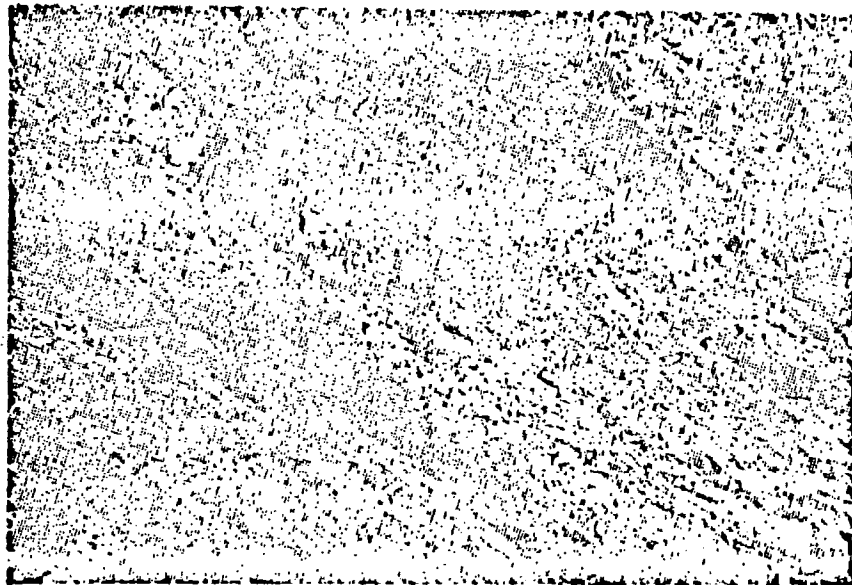


Fig. 35 Photomicrograph, x 24 mag., of section I44 under crossed nicols showing coarse lamellar talc enclosing rare anhedral segregations of probable serpentine-quartz composition.

Specimen I45: 'No.1 good specimen' .

This specimen of 'talc ore' consists nearly wholly of talc occurring in the form of a randomly orientated 'matted' aggregate of fibrous talc enclosing minor quartz-serpentine augen. As in previous sections the talc is rendered murky or dusty by fine inclusions of a brown amorphous material and an unidentified transparent phase. In places the talc has been cleansed of these inclusions along zones which appear to be independent of any intergrowth or crystallographic features of the talc (Fig. 36).

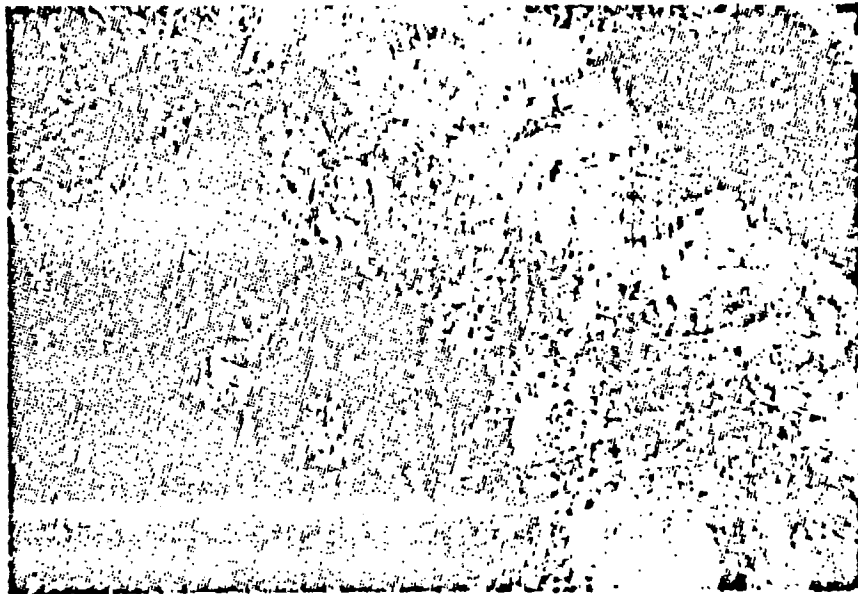


Fig. 36 Photomicrograph, x 24 mag., of thin specimen I45 under crossed nicols showing the form of aggregation of the talc and the difference between the 'murky' talc and the linear transgressive zone of 'clear' talc.

Specimen I46: 'No.3 face, coloured'

This specimen consists of very coarse lenticular aggregates of long fibrous and feathery talc crystals enclosing rare anhedral porphyroblasts of garnet.

DIGESTIVE TESTS

To confirm the presence of acid soluble carbonate material and also to help identify the type of carbonate present in the rock specimens collected, each powder specimen was subjected to a digestive test.

Half gram quantities of each of the powders were treated with normal hydrochloric acid for several hours at approximately 70°C. The residues were reweighed and the filtrates were analysed for their calcium and magnesium content using the EEL, 240 Atomic Absorption Spectrophotometer. The aim of the digestion was not to estimate the total acid soluble fraction only to help establish the carbonate minerals present and to estimate roughly their quantity to help interpret the X-ray powder photographs obtained from the samples.

The results are present under three headings, namely 'Rock Types', 'Carbonate Specimens', and 'Talc Specimens'.

It can be seen that only small quantities of carbonate material are present in the talc specimen group, similarly in the rock specimens with the exception of the marble specimen which is practically 100% calcite. The carbonate group of specimens appear to be mixtures of calcium and magnesium carbonate with a number of specimens being possible dolomites.

ROCK TYPES

Specimen No.	% Weight Loss	% Calcium	% Magnesium
I1	<0.2%	<0.2%	<0.2%
I7	3.0%	<0.2%	<0.2%
I12	<0.2%	<0.2%	<0.2%
I13	4.2%	1.0%	0.4%
I15	6.0%	<0.2%	0.4%
I16	4.8%	2.0%	0.4%
I17	6.0%	<0.2%	<0.2%
I20	11.2%	<0.2%	<0.2%
I23	1.4%	<0.2%	<0.2%
I25	22.4%	<0.2%	<0.2%
I27	9.0%	<0.2%	<0.2%
I29	3.6%	<0.2%	<0.2%
I31	9.6%	<0.2%	<0.2%
I34	92.2%	>20.0%	<0.2%

CARBONATE SPECIMENS

Specimen No.	% Weight Loss	% Calcium	% Magnesium
I4	22.8%	3.0%	1.1%
I6	48.0%	6.0%	1.15%
I11	21.6%	3.0%	6.4%
I14	44.2%	7.0%	5.0%
I18	75.2%	14.0%	24.0%
I19	37.8%	5.0%	4.0%
I21	61.8%	8.4%	8.0%
I22	91.2%	16.0%	15.2%
I30	15.0%	1.9%	1.6%
I35	50.8%	6.6%	13.4%
I37	51.0%	4.4%	24.0%

TALC SPECIMENS

Specimen No.	% Weight Loss	% Calcium	% Magnesium
I2	3.6%	<0.2%	0.4%
I3	1.6%	<0.2%	<0.2%
I5	5.4%	<0.2%	<0.2%
I8	6.0%	<0.2%	<0.2%
I9	<0.2%	<0.2%	<0.2%
I10	4.2%	<0.2%	<0.2%
I24	8.0%	<0.2%	<0.2%
I26	<0.2%	<0.2%	<0.2%
I28	12.6%	<0.2%	<0.2%
I32	1.2%	<0.2%	0.4%
I33	5.6%	0.34%	<0.2%
I36	4.6%	<0.2%	<0.2%

/Continued....

TALC SPECIMENS (Continued)

Specimen No.	% Weight Loss	% Calcium	% Magnesium
I38	1.0%	<0.2%	<0.2%
I39	<0.2%	<0.2%	<0.2%
I40	7.0%	<0.2%	<0.2%
I41	<0.2%	<0.2%	<0.2%
I42	0.8%	<0.2%	<0.2%
I43	6.2%	<0.2%	<0.2%
I44	<0.2%	<0.2%	<0.2%
I45	8.0%	<0.2%	<0.2%

Electron Microscope Examination of Italian
Mine Samples and Imported Batch Shipments of
Italian Powder

The main purpose of the electron microscope examination of mine samples and also representative fractions of the Italian powder has been to establish whether or not any particles corresponding to the commercial forms of asbestos were present. The electron microscope is an instrument which is most usefully employed in the examination of particles less than ten microns in size. It has been used in this investigation therefore to examine only the finer particulate portion of the Italian samples. It may be argued that only a small fraction of each of the powdered samples was examined and that this was not representative of the total sample. However, we can assume that the fraction examined was representative of the dust formed from each sample and that it is this finer fraction which is the most important from a biological standpoint. Also as the size of the biologically active commercial asbestos particles fall entirely within the particle size range examined we can consider the main aim of the examination to be entirely satisfied by only looking at the finer fractions from each of the Italian samples.

To acquaint ourselves with the type of particles formed by the commercial asbestos minerals, Figs. A-D have been included. They represent samples of Amosite, Crocidolite, Anthophyllite and Chrysotile asbestos. Also Figs. E-F have been inserted to demonstrate typical single particle electron diffraction patterns which can be obtained from the four asbestos types for comparison with patterns obtained from the Italian samples.

Sample Preparation

Small portions of the powdered rock samples and imported powder specimens were placed in 15cc centrifuge tubes to which distilled water was added. The powders were then dispersed first by hand shaking and then with the aid of a small ultrasonic bath. The concentration of suspended material in the tubes was adjusted by eye using dilutions of distilled water. The tubes containing suspended solids were then allowed to stand for 20 minutes to allow the larger particles of mineral to sediment to the bottom of the tubes.

Electron microscope grids coated with carbon films were prepared and small drops of the particulate material from each of the specimen tubes were mounted on specimen grids and allowed to dry. The specimens were inserted into an A.E.I. E.M.6. electron microscope and examined for particles resembling commercial asbestos fibres. Where suitable particles were observed, selected area electron diffraction patterns were taken and compared with those produced by the commercial asbestos minerals. In all cases photomicrographs representative of the type of particles found in each sample were taken while interesting diffraction patterns were also recorded.

Particle Morphology

The carbonate rich materials were found to produce compact particles which were very electron dense. On the whole they were finer particles than those obtained after crushing talc rich specimens. No fibrous material whatsoever was found when carbonate material only was comminuted. The morphology of particles produced from the footwall rocks i.e. limestone, marble, gneiss and the amphibolites were also very compact, although in the gneiss specimen platy particles were present probably representing the muscovite content of the specimen. Again in the footwall rock specimens fibrous particles were very scarce. Those lath like particles detected resembled the amphibole minerals rather than chrysotile. Selected area diffraction patterns which were obtained from the lath like particles in no way resembled the typical amphibole fibre diffraction pattern. They were generally very distorted patterns containing streaks rather than spots indicating a rather stressed and deformed material.

The specimens which were composed of talc together with other mineral associations, presented a very different picture, as far as particle shape was concerned. In the main particles were flat and plate-like, some being very thin and translucent in the electron beam. Particle sizes varied from very small to quite large plates some with very sharp discrete edges, others with rather ragged outlines. Comparing particles from those samples of talc which varied in bulk morphology in hand specimens, no observable difference could be drawn between them. Similarly, a comparison of particles produced from talc specimens of varying colour revealed no differences in the overall particle shape. Similarly those specimens rich in chlorite did not form particles with any distinctive features.

There were, however, observable differences in particle morphology between individual powder specimens. In the main most produced good plate like particles, however, one or two specimens were found to contain considerable numbers of lath like particles, these being very thin in character. These particles resembled the amphibole asbestos type particle being less regular and also very much larger in projected diameter. Diffraction patterns from these particles matched those obtained from the platy particles with which they were associated and in no way resembled the typical amphibole diffraction pattern obtained from single amphibole asbestos fibres.

Other fibrous particles were observed in the mainly talc specimens which to some extent resembled chrysotile asbestos fibres rather than amphibole minerals. They often had a somewhat textile appearance but were, however, crystalline. Diffraction patterns from these fibres were very distorted and in no way matched typical chrysotile or amphibole patterns.

The only group of specimens in which amphibole fibres were confirmed were in those specimens with known amphibole composition. However, even the fibres found in these specimens barely resembled the fibres formed by the commercial amphibole asbestos minerals. To assess the particles produced from the pure amphibole mineral (Tremolite), found in three of the specimens, small crystals of the mineral were taken from the hand specimens and crushed separately. An examination of the finer particles produced revealed stubby electron dense fibres associated with irregular lumps of the same mineral. Diffraction patterns from these fibres were similar to those obtained from the commercial amphibole minerals, although they were more difficult to obtain because of the greater thickness of these particles. Other specimens in the group, which did not contain talc but were composed of sheet silicate minerals mainly muscovite, were also practically free of fibrous particles. There appeared to be no general tendency for these other minerals to form fine fibrous particles. A number of very fine short fibres were observed on grids prepared from several of the talc specimens, these were, however, chance small pieces torn from the edges of talc plates. They appeared in those samples which had a tendency to form copious numbers of very fine particles when subjected to comminution.

The specimens examined can be grouped into four categories on the basis of particle morphology and they are as follows:

- (a) Talc specimens with impurities of carbonate and chlorite.
- (b) Rock type specimens, i.e. footwall limestone etc.
- (c) Those specimens composed mainly of carbonates.
- (d) Amphibole specimens with carbonate and talc.

The talc specimens were characterised by the large number of plate like particles often translucent in the electron beam. Rock specimens varied from specimens which were composed mainly of compact electron dense particles to those with some sheet silicate content in which plate like particles become apparent. Those specimens composed mainly of carbonate material produced compact rounded particles, often very small and grouped together in aggregates. Finally the specimens containing amphibole were characterised by the compact nature of the particles with evenly distributed fibres and very few translucent plates. The groups of particles described are illustrated by the following micrographs which illustrate the various forms.

Selected area electron diffraction patterns obtained from single particles of the amphibole mineral are also presented showing the similarity of these patterns to those obtained from commercial asbestos fibres. Also included are single crystals patterns and polycrystalline patterns, from talc, chlorite and muscovite rich specimens. It can be seen that they are very different in character to those obtained from the amphibole mineral. However, patterns from the sheet silicate minerals mentioned above are all very similar and it is impossible to identify each of these minerals from their

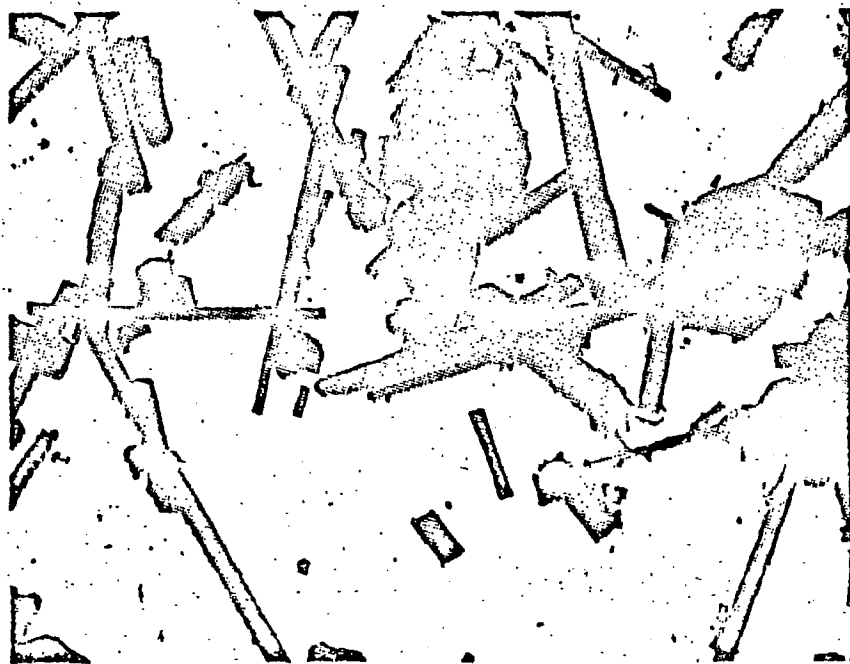
electron diffraction patterns or to tell them apart without applying a more sophisticated approach to the diffraction procedure. With specimen tilt facilities enabling the particle to be rotated through more than 45° discrimination is possible between certain of these minerals.

As mentioned earlier, patterns obtained from lath like particles found in the talc specimens were identical to those observed from general plate like forms. Those fibres with a textile like appearance often only gave very streaked patterns but in one or two cases these also resembled very closely the normal talc pattern.

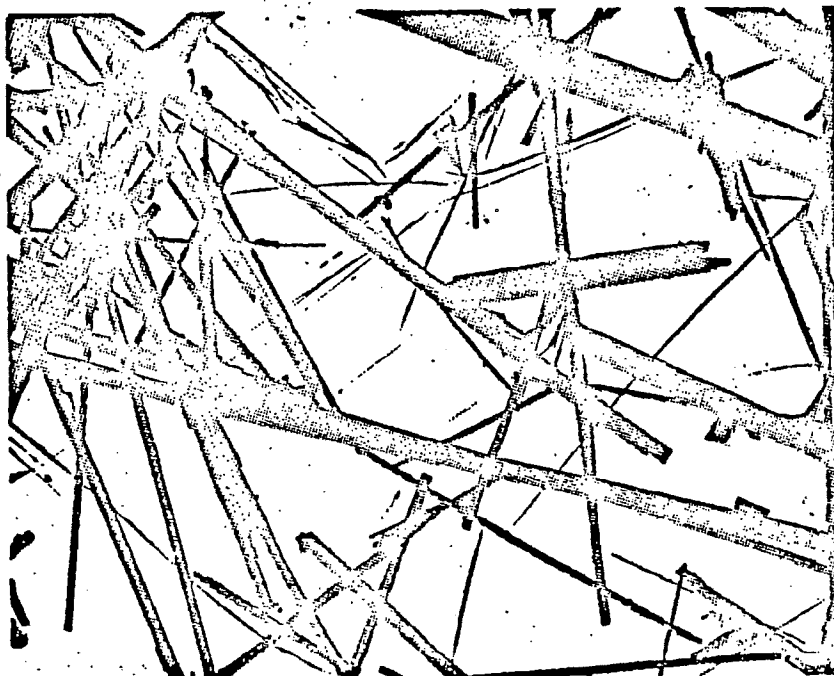
Examples of Commercial Amphibole and Chrysotile asbestos particles together with typical selected area electron diffraction patterns.



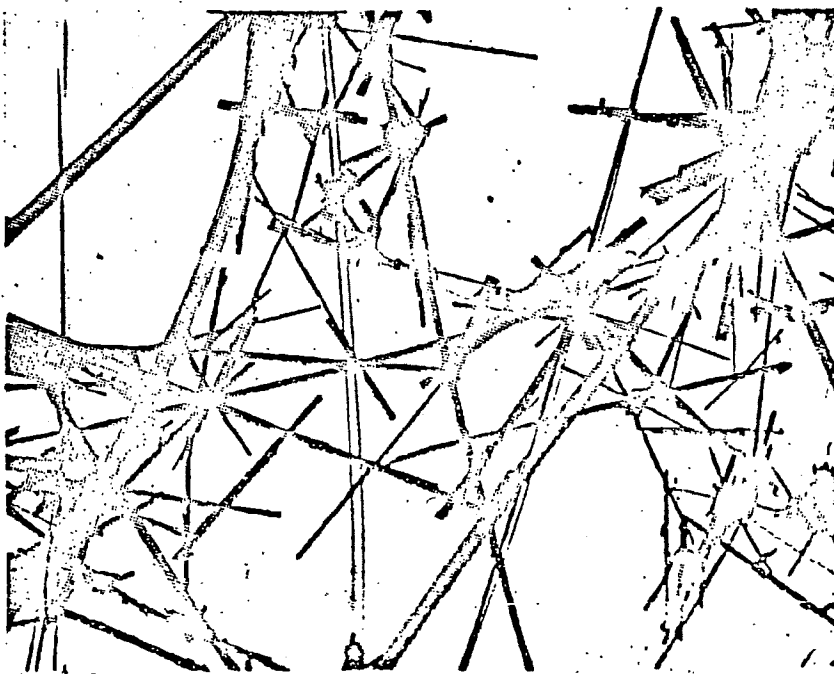
Chrysotile asbestos particles x 3000



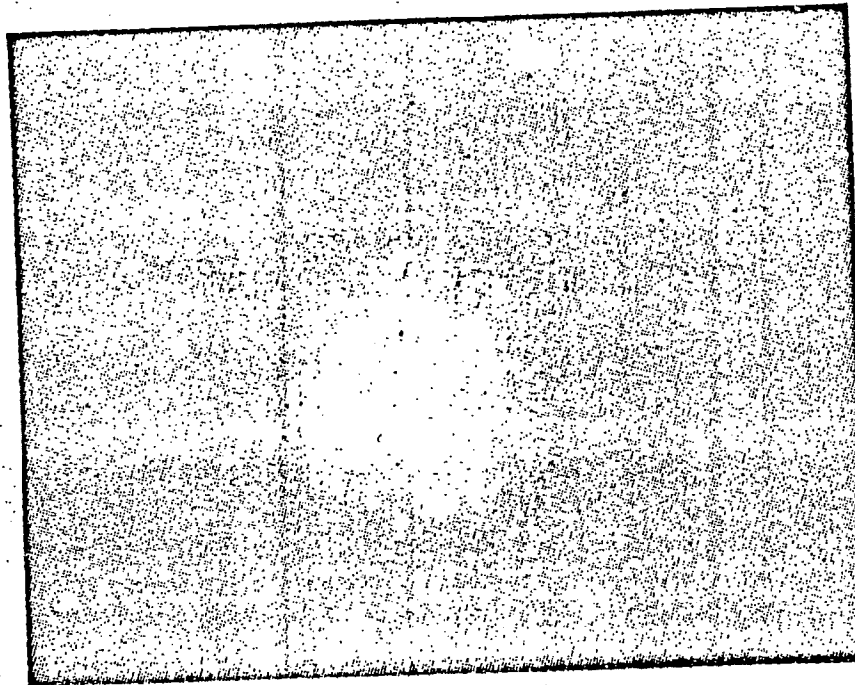
Anthophyllite asbestos particles x 3000



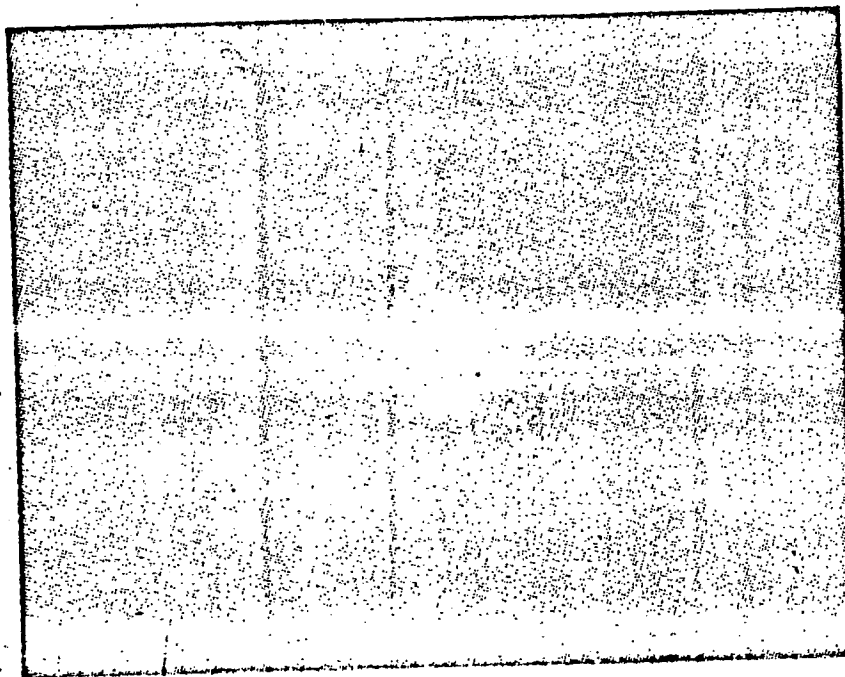
Amosite asbestos particles x 3000



Crocidolite asbestos particles x 3000



Amphibole asbestos selected area
electron diffraction pattern.



Chrysotile asbestos selected area
electron diffraction pattern.

Electron micrographs of particles produced from
specimens which have been classified as rock
types.

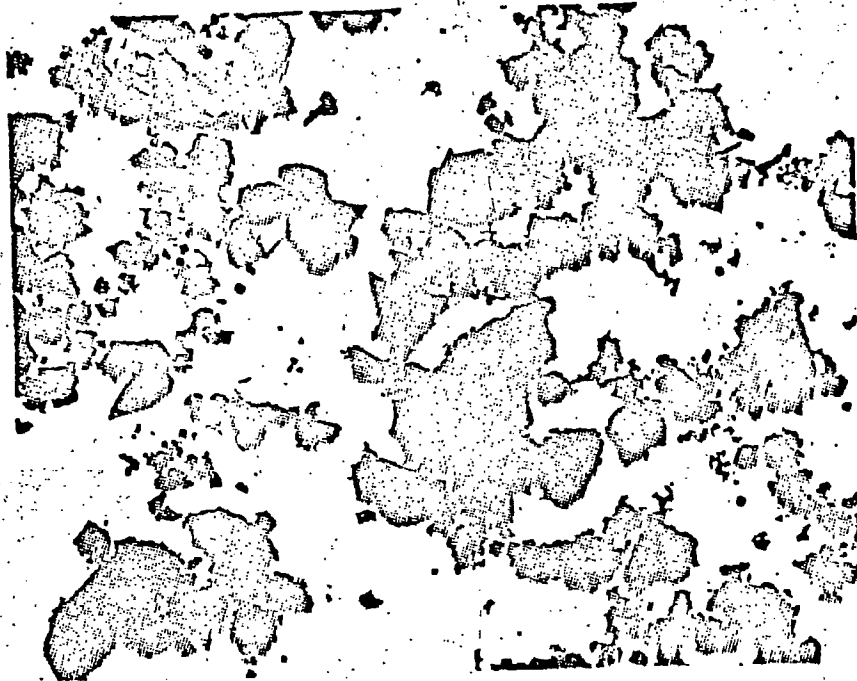


Fig. 1. Specimen I13 seam inclusion showing passage into talc x 3000. The particles are mainly compact and electron dense. A few flakes, no fibres present.

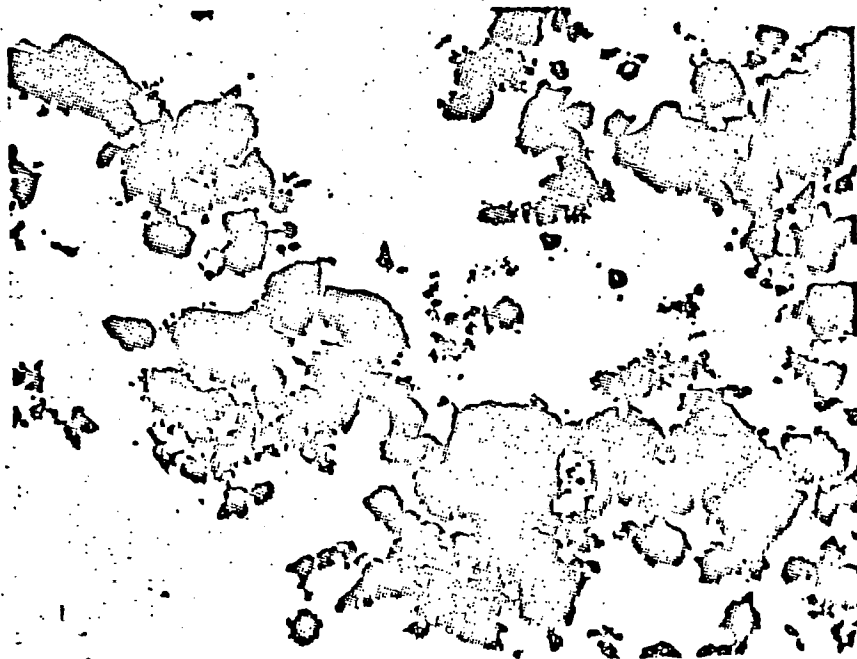


Fig. 2. Specimen I15. Talc footwall contact. x 3000. Compact particles with a few small flakes. No fibres present.

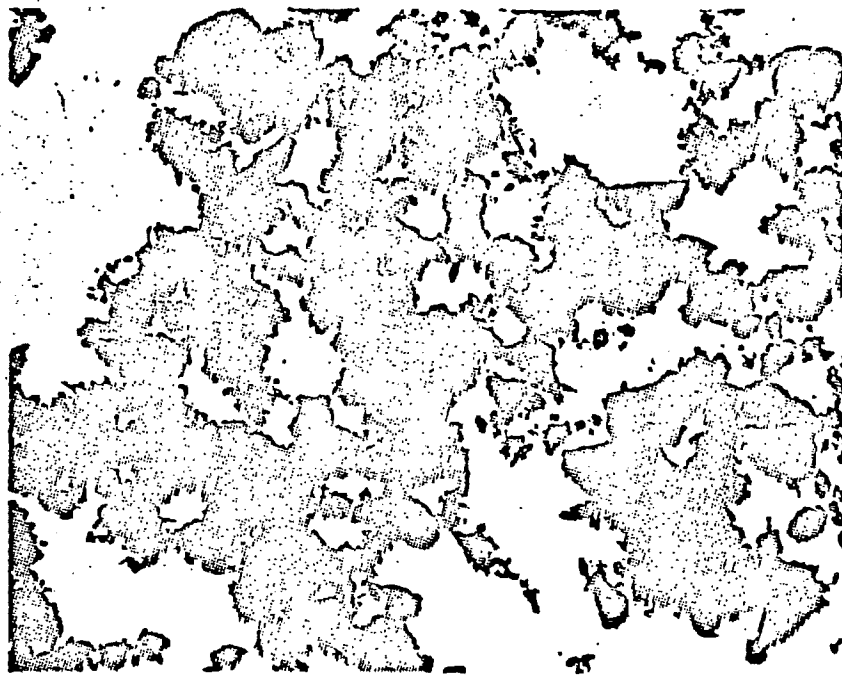


Fig. 3. Specimen I16. Lithological inclusion from Face 1. x 3000. Compact electron dense particles. No fibres present.

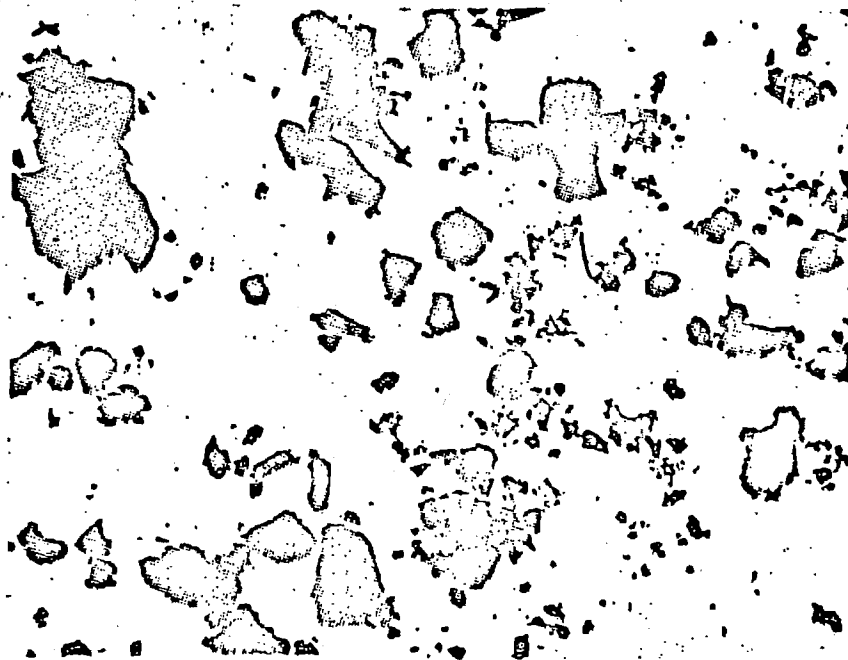


Fig. 4. Specimen I17. Footwall rock sample, x 3000. Mainly compact particles produced with a few plate like forms.

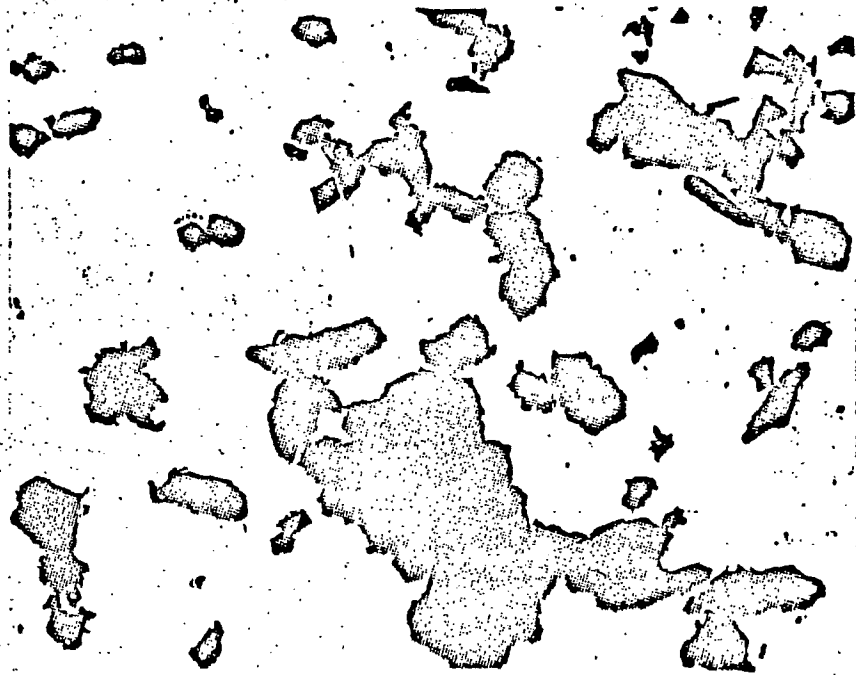


Fig. 5. Specimen I23. Black gneiss, 2ft below talc seam. x 3000. Compact electron dense particles produced.



Fig. 6. Specimen I25. Footwall limestone. x 3000. Compact electron dense particles.

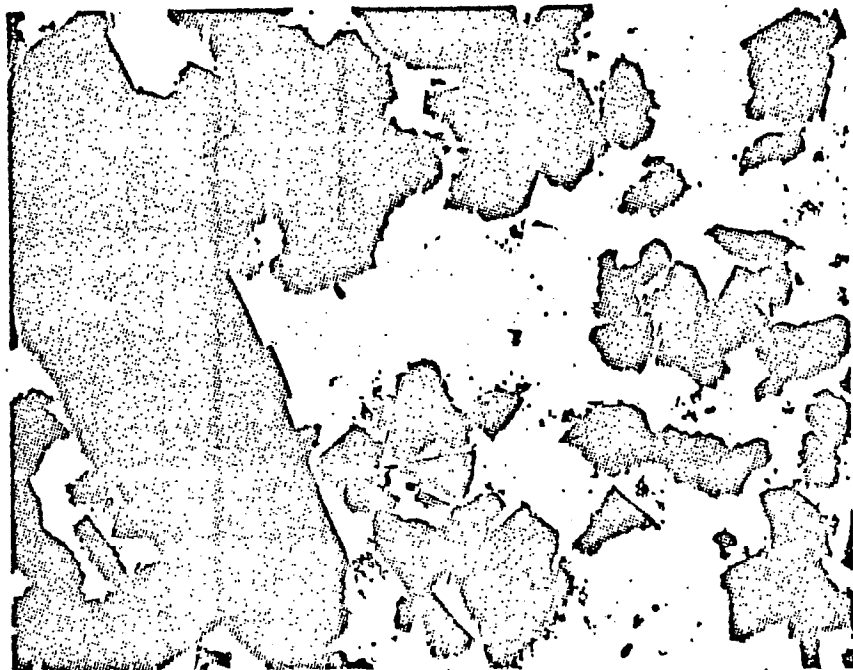


Fig. 7. Specimen I27. Lithological inclusion face 1.
x 3000. Platey electron dense particles.
No fibres.

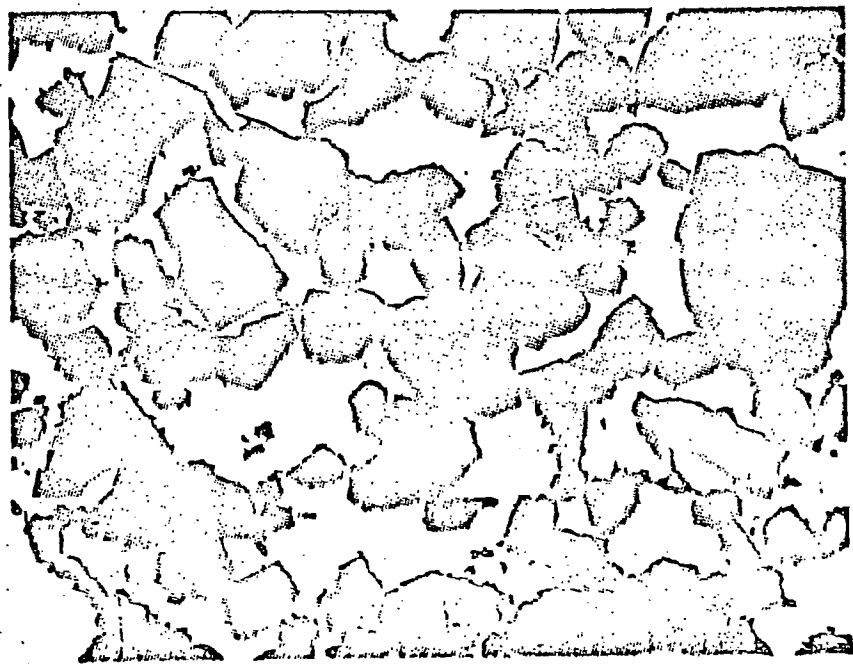


Fig. 8. Specimen I29. Sample 6 Footwall. x 3000
Compact electron dense particles with a few
fibre.

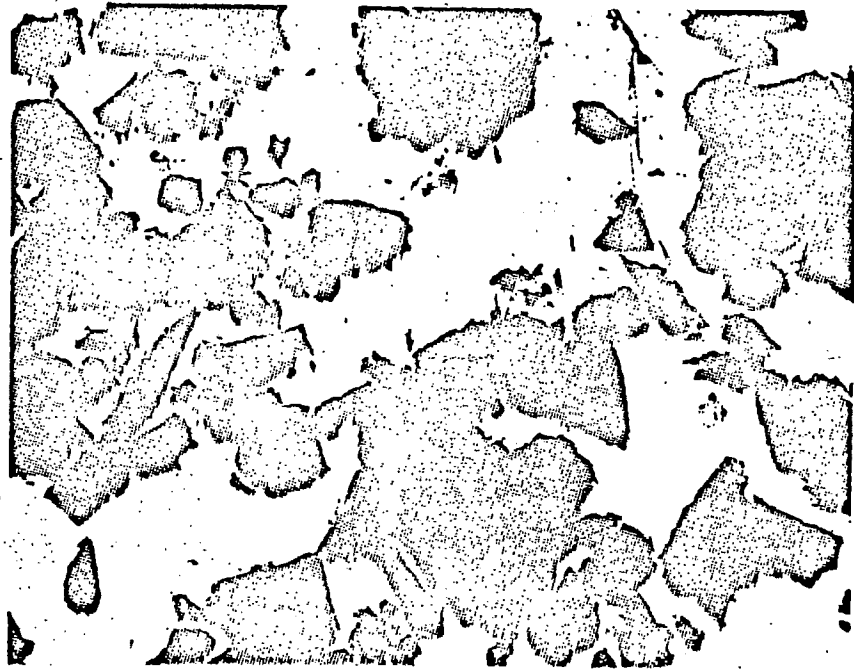


Fig. 9. Specimen I31. Black inclusion face 1. x 3000
A mixture of plate-like and compact forms
mainly electron dense in character.



Fig.10. Specimen I34. Marble from tunnel wall. x 3000
Mainly compact electron dense particles with a
few plate-like forms.

electron micrographs of particles produced from those
specimens mainly composed of carbonate minerals.

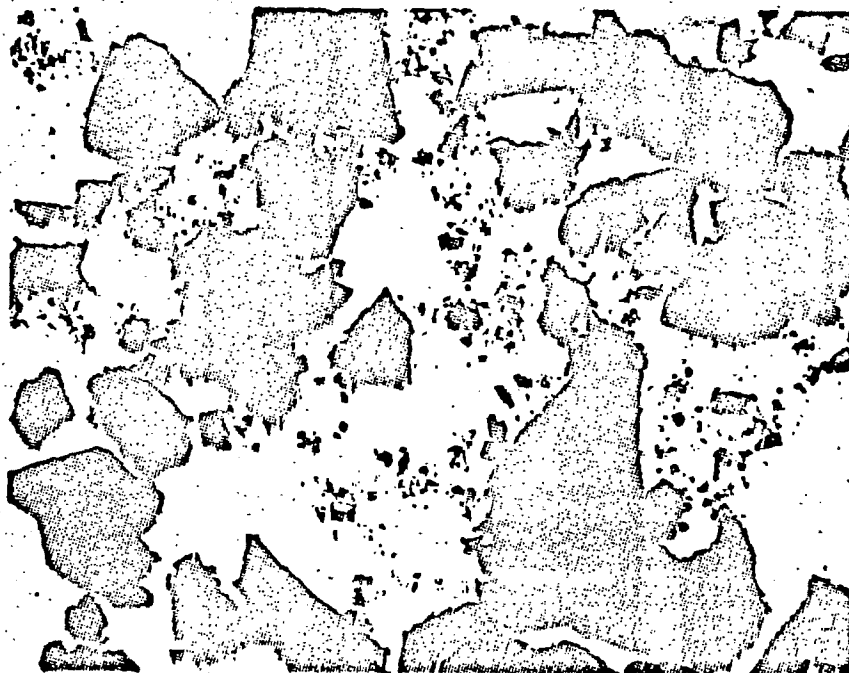


Fig. 1. Specimen I₁₁. Carbonate inclusion with some talc. x 3000. Particles consist of a mixture of compact and plate-like forms.



Fig. 2. Specimen I₁₄. Inclusion in talc seam Face 4, middle of seam. x 3000. Granular particles with plate-like types and lath-like forms.



Fig. 3. Specimen I18. Carbonate/talc sample, x 3000. Particles compact and electron dense. A few plate-like forms.



Fig. 4. Specimen I21. Inclusion from Face 2. x 3000. This specimen produced plate-like and compact particles with some lath-like forms.

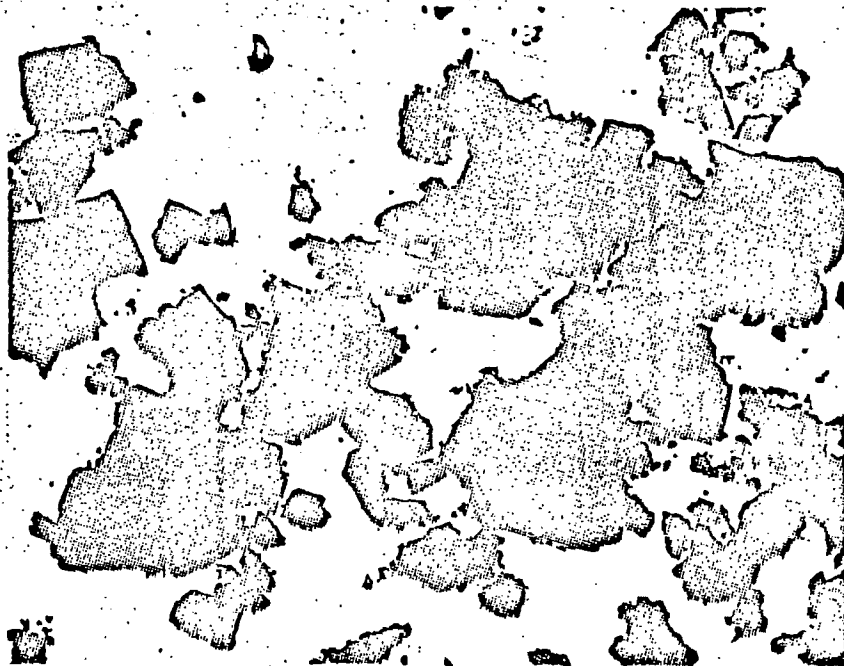


Fig. 5. Specimen I35. Massive carbonate from rear end of working, x 3000. Compact electron dense particles with some plate-like talc particles.



Fig. 6. Specimen I37. Carbonate in talc inclusion x 3000. Compact particles together with some plate-like forms and rolled talc sheets.

Electron Micrographs of specimens of talc with
carbonate and other mineral inclusions.



Fig. 1. Specimen I3. Coloured talc (Green) x 3000. Particles plate-like. Few fibres, rolled sheets and shords.



Fig. 2. Specimen I5. General ore, x 3000. Plate-like particles together with short lath-like particles, also a typical example of textile type fibre.



Fig. 3. Specimen I8. Massive talc, x 3000. Plate-like particles with a few lath-forms also typical textile type long fibre.

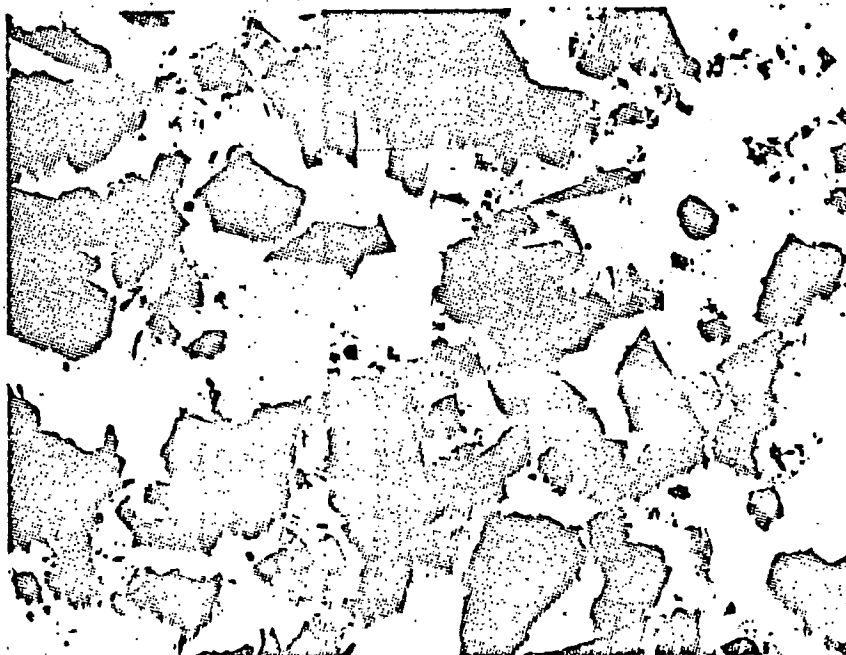


Fig. 4. Specimen I9. Grey talc First Face, x 3000. Practic ally all plate-like with a few lath forms.

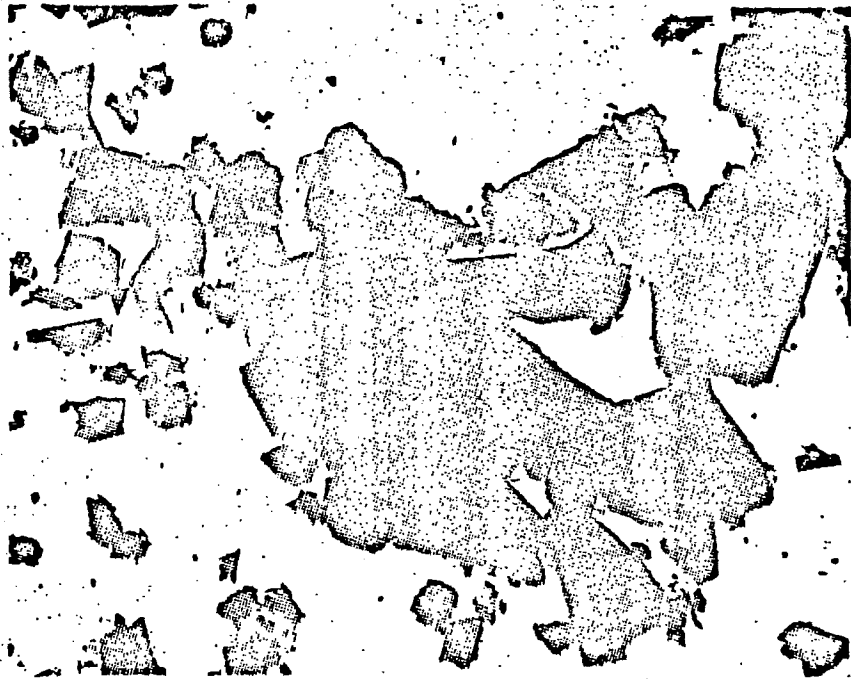


Fig. 5. Specimen I10. Granular talc, x 3000.
All plate-like particles.

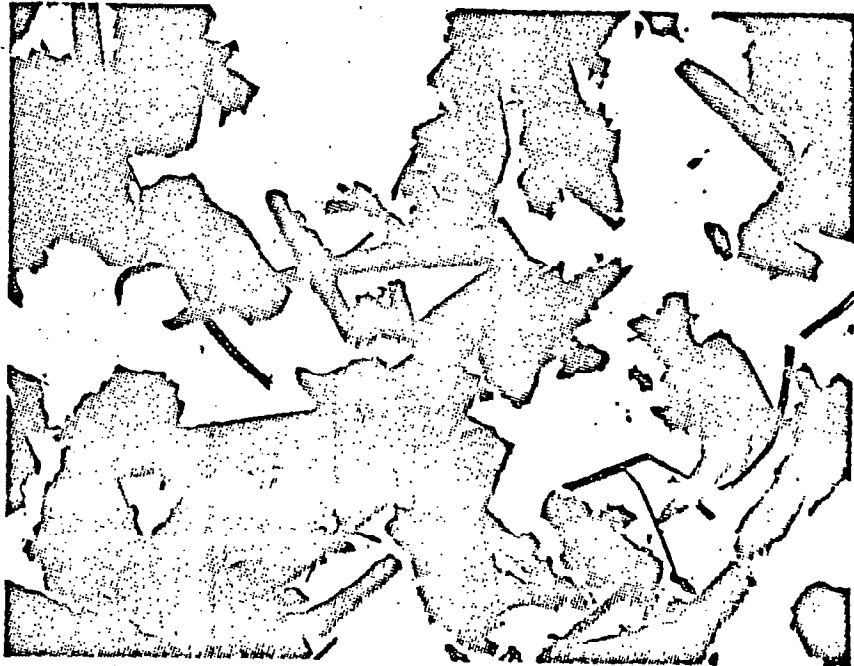


Fig. 6. Specimen I24. Talc next to carbonate inclusion,
x 3000. This specimen was found to contain a
large number of lath-like particles, as can be
seen from the micrograph above. No diffraction
pattern corresponding with an amphibole fibre
was obtained from a selection of the elongated
particles.

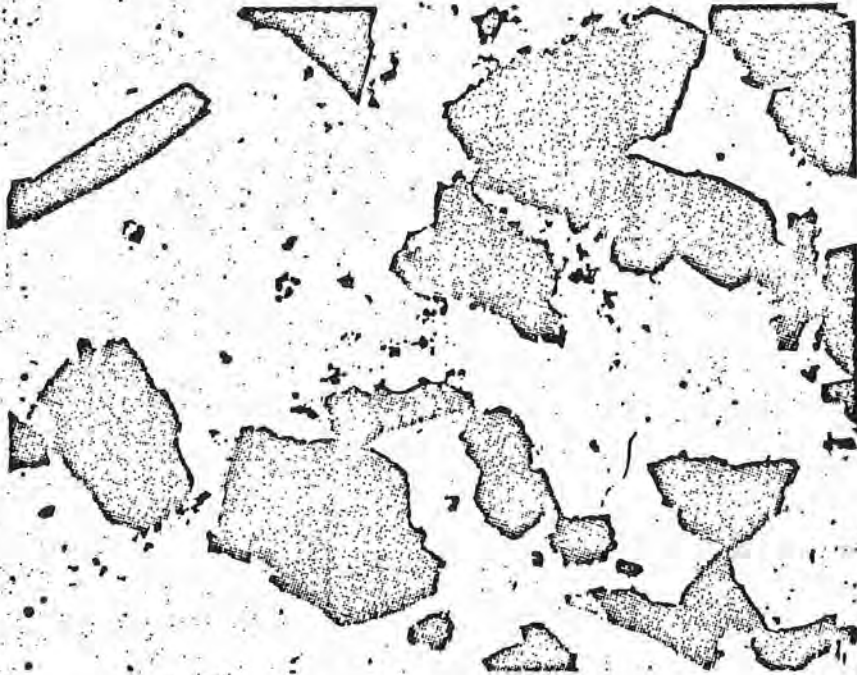


Fig. 7. Specimen I26. Coloured talc inclusions, x 3000. The particles produced from the various coloured inclusions in the talc were found to be mainly plate-like with a few lath forms.

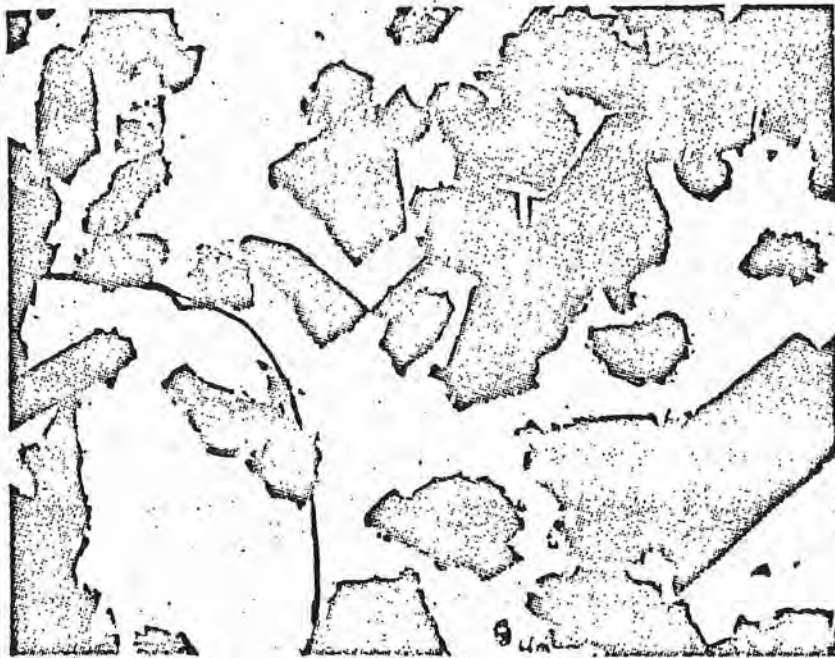


Fig. 8. Specimen I28. Talc/Quartz specimen, x 3000. Particles from this specimen were mainly plate-like but accompanied by more compact opaque particles. A few textile type fibres were observed.



Fig. 9. Specimen I32. Face 2 inclusion from base of talc seam, x 3000. The specimen produced a mixture of irregular particles varying from compact to plate-like in form with a few lath like particles.



Fig.10. Specimen I33. Talc from lower left end of working x 3000. Particles mainly plate-like with some lath forms.



Fig. 11. Specimen I38. Pyrite/Talc specimen, x 3000. Plate-like particles with some rolled tubes of talc.

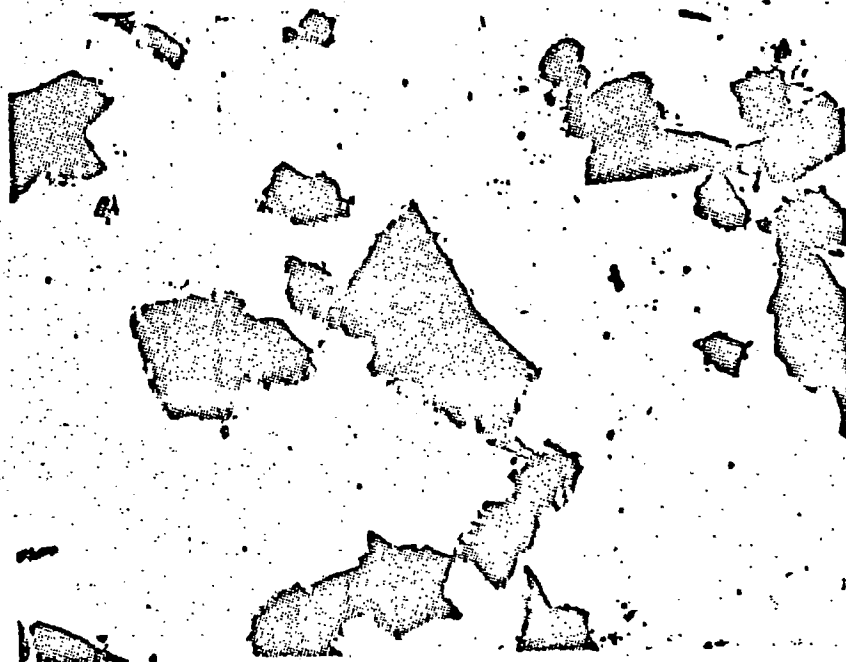


Fig. 12. Specimen I39. 5" - 0 coloured pieces from the crusher, x 3000. These various coloured talc pieces produced only plate-like particles.

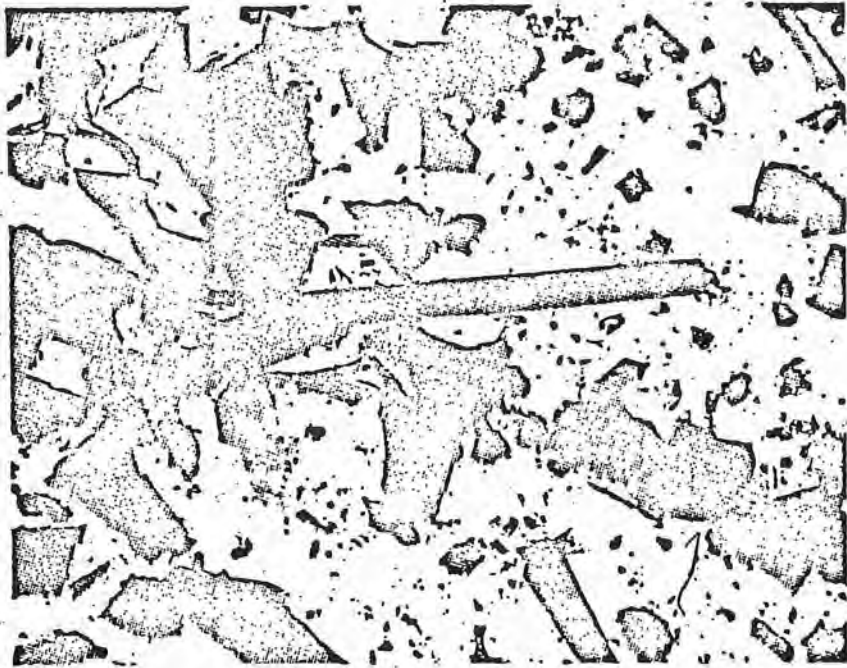


Fig. 13 Specimen I41. Face 2, good talc specimen x 3000. Plate-like particles together with rolled talc sheets lath forms and textile type fibres.

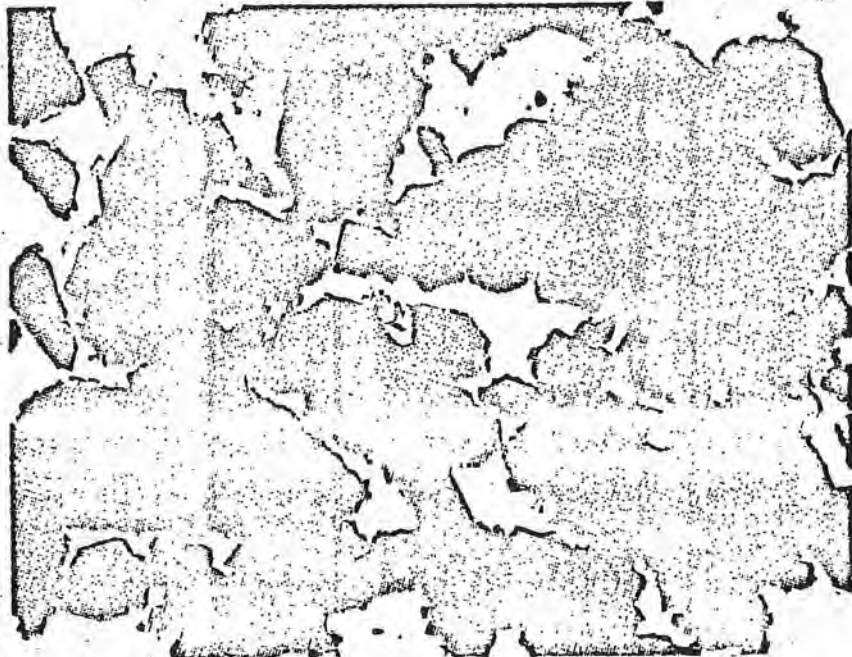


Fig. 14. Specimen I42. Face 1, green coloured talc, x 3000. This coloured specimen produced plate-like particles which were rather more electron dense.



Fig. 15. Specimen I43. Face 10. Fibrous looking hand specimen, x 3000. This sample was found to be practically all plate-like in form.



Fig. 16. Specimen I44. Face 1. Pure talc sample, x3000. Plate-like particles with some lath-like forms.



Fig. 17. Specimen I45. Face 1. Good talc specimen, x 3000. A mixture of plate-like particles and fibrous forms, including rolled tubes and textile type fibres.



Fig. 18. Specimen I46. Face 3. Coloured specimen x 3000. Plate-like particles with shards and lath like forms, together with a typical textile form, which can be seen to have a

Electron Micrographs of particles produced from those specimens containing amphibole mineral and also from the amphibole mineral itself.



Fig. 1. Specimen I19. Tremolite/carbonate talc sample x 3000. Compact particles, a few lath forms present.

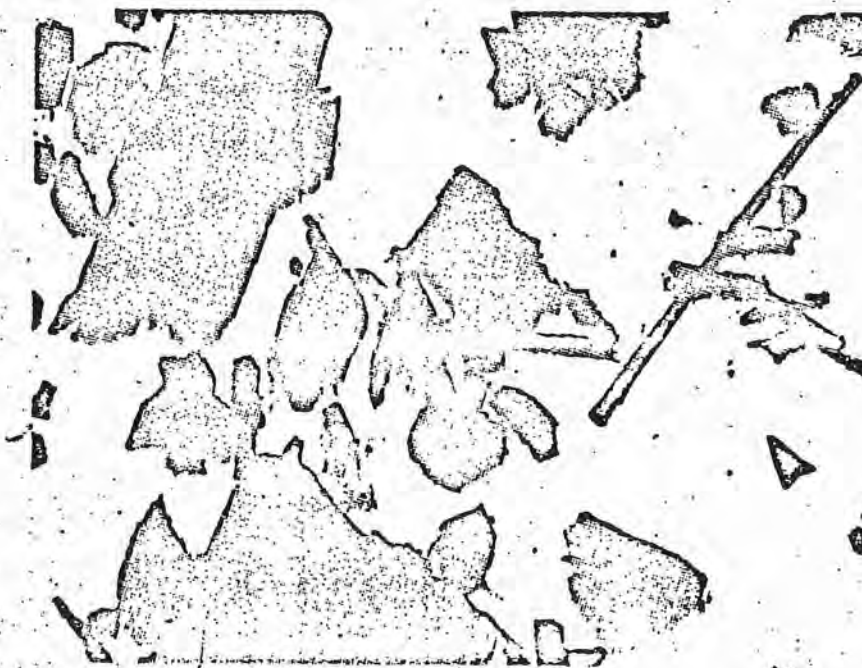
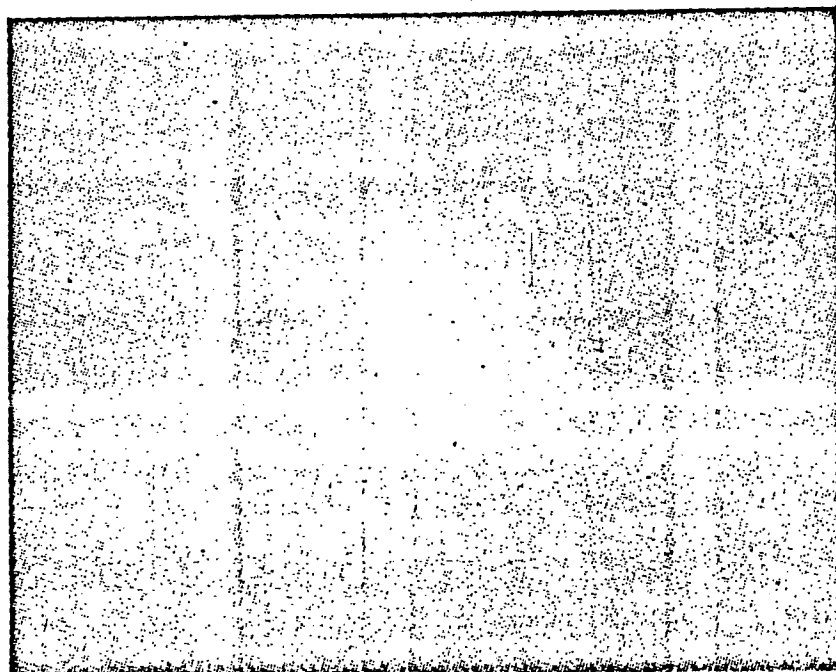
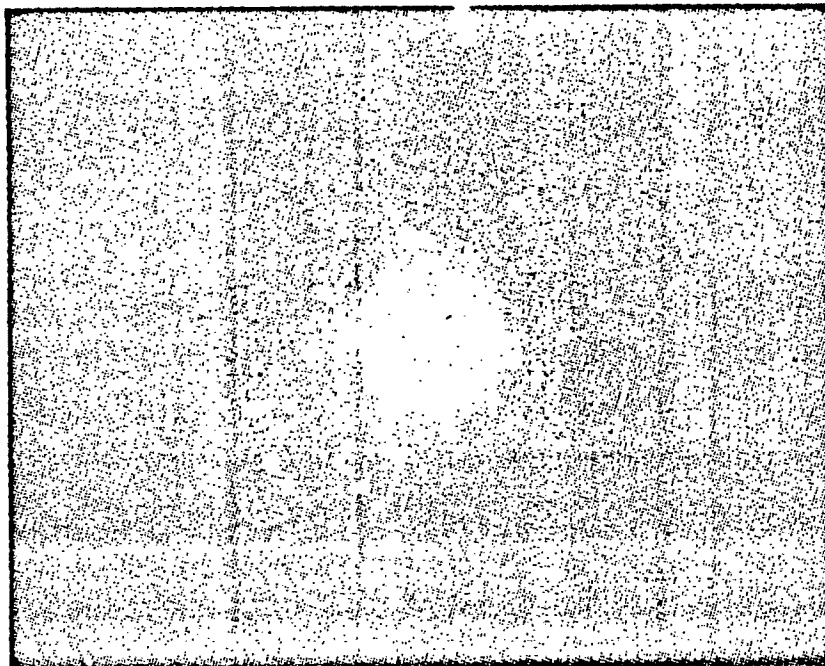


Fig. 2. Specimen I20. Amphibole sample from Guiana level 1212. x 3000. Compact particles with numerous lath forms.



Figs. 3 and 4

Particles produced from single crystals of tremolite extracted from specimens I19 and I20. x 3000. Very few fibrous particles were produced when this specimen was crushed. Those that were fibrous in nature were thick and stubby in character, less than 50% of the particles were elongated in shape.



Figs. 5 and 6

Selected area electron diffraction patterns
obtained from amphibole particles found in
specimens I19 and I20.

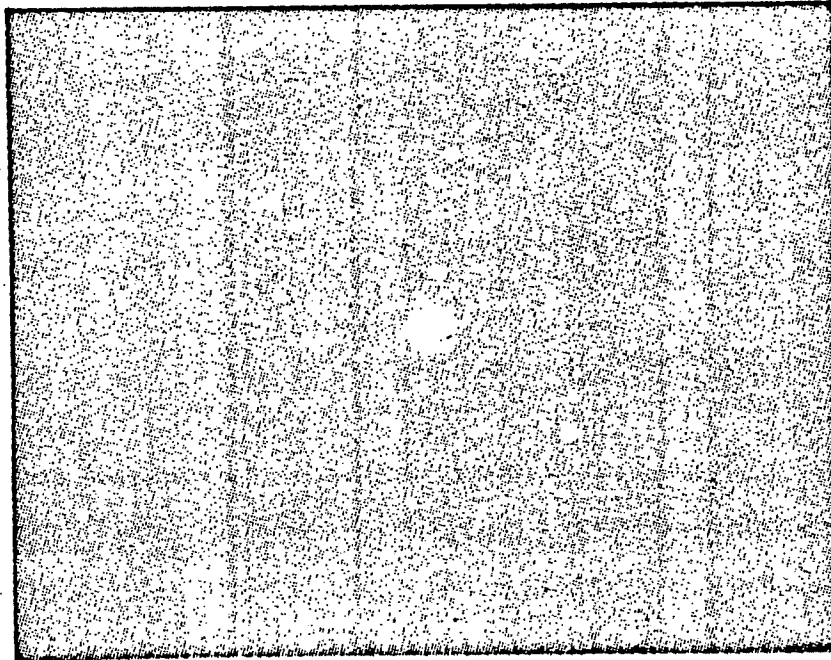


Fig. 7. Typical selected area diffraction pattern obtained from talc plates.

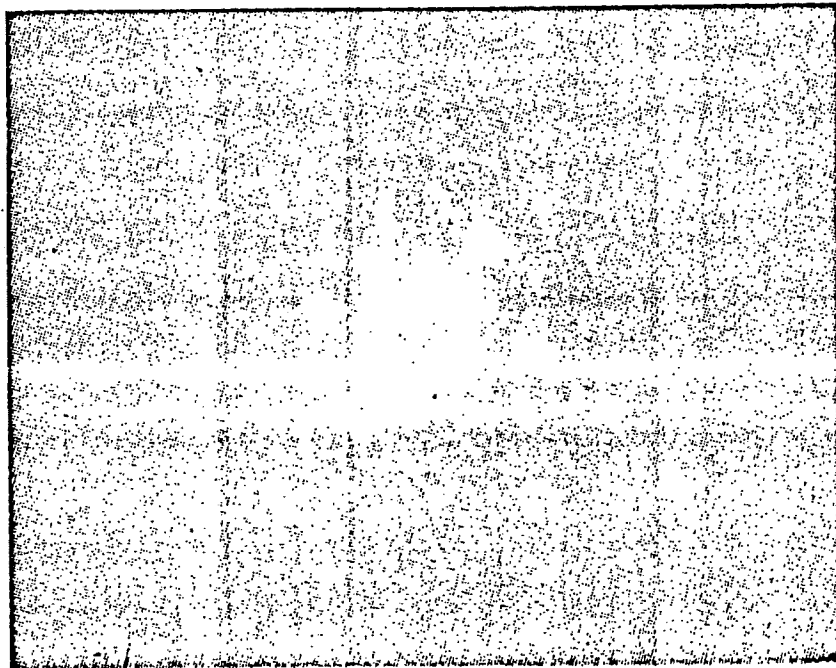


Fig. 8. Selected area diffraction pattern obtained from a typical textile type fibre showing features of a rotated or coiled structure.

X-RAY ANALYSIS OF ITALIAN MINE SAMPLES

Introduction

This report concerns the X-ray powder analysis of the Italian mine samples. The samples were classified into three categories according to their chemical and physical properties:

- (i) 'Rock' Type
- (ii) 'Talc' Type
- (iii) 'Carbonate' Type

All the samples were prepared by similar means and the procedure for obtaining the X-ray powder patterns was standardised.

From these powder photographs, several were chosen which clearly showed distinct mineral phases. These were used as standards for this group of samples. These standard patterns were compared against the ASTM index and this comparison illustrates the need to prepare standards for a particular locality from specimens at that locality.

The samples were compared with these standards by computer methods and visually and the results and discrepancies between the methods of comparison noted.

LIST OF SAMPLES

See Table 1

SAMPLE PREPARATION

The samples were received mainly as large rocks and were labelled according to their appearance and location in the mine.

With the larger samples a section was cut from the middle to be a representative sample, for the smaller samples as many pieces as possible were crushed to form the representative sample.

These samples were then roughly broken up and placed in a 'Tema' disc mill and ground for 5 mins. until all the sample was below approx. 100 mesh. These powders were stored in clean plastic bags. The samples, when required for X-ray analysis, were further ground (to less than 300 mesh) in a small agate ball mill and then sieved through a 350 mesh screen and stored in plastic bags.

The grinding mills and other apparatus used were thoroughly cleaned between samples and during the grinding care was taken to obtain a good representative sample.

All the samples were analysed using a Debye-Scherrer camera mounted on a Raymax RX 3-D X-ray generator. A copper X-ray tube was used with nickel filters (0.02 mm thick) and the power rating of the tube set at 36 kV and 22mA.

The apparatus was carefully aligned and checked before mounting a sample. All the samples had the same exposure time of 8 hrs.

The samples were loaded into 0.5 mm diameter Lindemann glass tubes to be mounted in the Debye-Scherrer cameras. In the cameras Ilford Industrial 'G' X-ray film was used. The film was processed using Kodak DX-80 developer and Ilford Hypain fixer. The films were developed for 5 minutes using a 1:4 dilution for the developer and fixed for 2 minutes. The films were then washed in running water for 30 minutes and allowed to dry naturally. The X-ray films were then measured.

Using an illuminated screen and the line-spacings calculated, taking into account film shrinkage, from these line spacings the bragg angle and 'd' spacings can be calculated.

STANDARD PATTERNS

When all the samples X-ray photographs had been measured and the 'd' spacings calculated, they were visually inspected to find the film showing samples with pure mineral phases. These patterns were then taken as standards.

The samples were then broken up and the different mineral phases were sorted by hand to attempt to find a purer standard. These samples were then crushed in a similar way to the samples crushed beforehand. For X-ray analysis they were placed in 0.2 mm diameter tubes and given a 12 hr exposure. This method was used to give finer lines on the X-ray photograph and the larger exposure was to try and detect as many impurities as possible.

The 'd' spacings of the standards were compared with the A.S.T.M. index and also with themselves. They were compared with themselves to check that all the Talc and Chlorite standards matched each other and were similar in intensity.

Several standards were prepared containing the same mineral. This was because the 'd' spacings of the mineral varied slightly from sample to sample and especially with chlorite, depending on its composition the major reflections varied between 13.5% and 15.0%. This was mainly due to varying iron content and this can easily be seen on the X-ray films as it causes fluorescence with copper radiation and blackens the X-ray film generally.

RESULTS

For the analysis of the results the samples have been divided into five sections:

- (i) standard patterns
- (ii) sample patterns (rock type)
- (iii) sample patterns (carbonate type)
- (iv) sample patterns (talc type)
- (v) batch sample patterns (includes old powders and shipments).

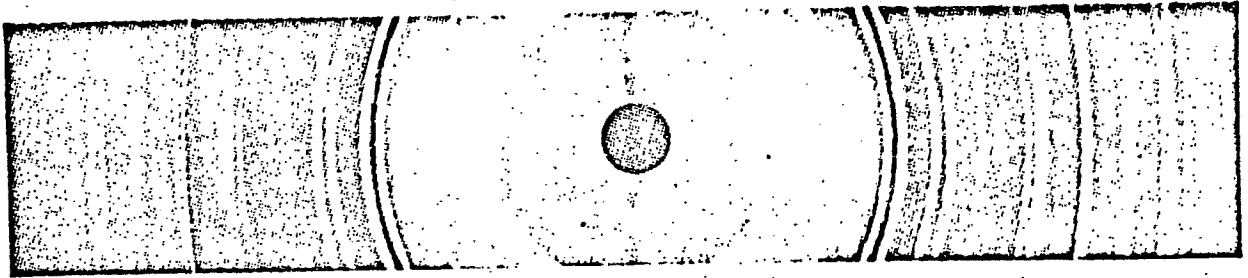
Two methods were used to find the mineral present in the sample. One method uses a computer program to detect the mineral.

In this method the bragg angles of samples were compared with the bragg angles of the standard and the number of lines fitted printed out. A print out was also obtained of all the standards which fitted a particular line to find all the possible minerals present and to see which lines were common to several standards.

As this procedure is quite long, the lines in the sample were first sorted into order of decreasing intensity and then the three most intense lines of the sample compared with the standards. If all three lines failed to match it was considered that that standard was not present and so the program deleted that standard from the comparison. At the end of the program the list of the standards was printed with the percentage of lines fitted to the sample noted.

The obvious disadvantage of this comparison was that the program could take no account of the relative intensities of the lines and so a visual method was used to find which was the major mineral phase. The computer program usually found the mineral phases present in the samples but could not place them in the correct order.

Patterns used as standards from the
Italian mine samples and their
comparison with A.S.T.M. data and
against themselves.

SAMPLE SIP 1 TALC 162511

Comparison against A.S.T.M. index: 1 line unmatched, 1.1145 Å⁰

Patterns not included: 6-263 Muscovite -2M1, 7-25

Muscovite (1M), 7-32 Muscovite (2M1), 7-76 Ripidolite (Chlorite), 7-78 Thuringite (Chlorite), 7-166 Bavalite (Chlorite), 10-183 Peninnite Chlorite, 11-78 Dolomite, B and T Quartz.

Most probable minerals present: Talc Muscovite Calcite

Comparison against Italian Standards

Patterns not included: Chlorite (I42), Chlorite (I4), Muscovite (I35), Magnesite (I6), Tremolite (I19/I20), Dolomite

Most probable minerals present: Talc

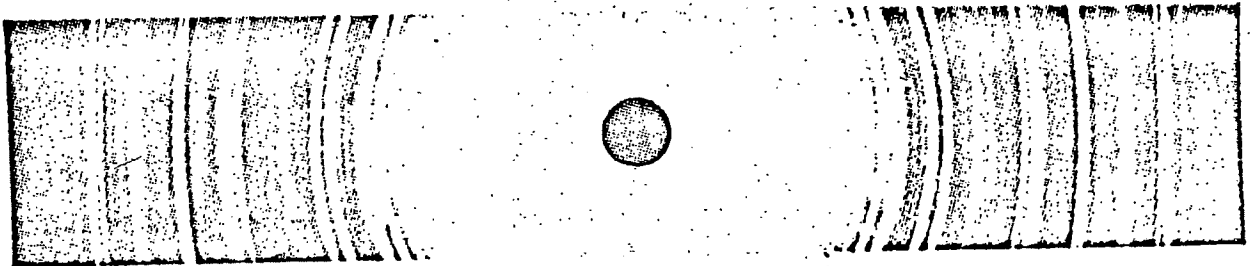
Visual comparison

Talc, Calcite

Minerals detected

Talc, Calcite

SAMPLE SIP 2 TALC



Comparison against A.S.T.M. index: 2 lines unmatched, 1.1159 Å⁰
1.1353 Å

Patterns not included: 7-76 Ripodolite (Chlorite), 7-78 Thuringite (Chlorite), 7-166 Bavalite (Chlorite).

Most probable minerals present: Talc, Muscovite, Calcite

Comparison against Italian Standards

Patterns not included: Chlorite (I42), Chlorite (I4), Tremolite (I19/I20).

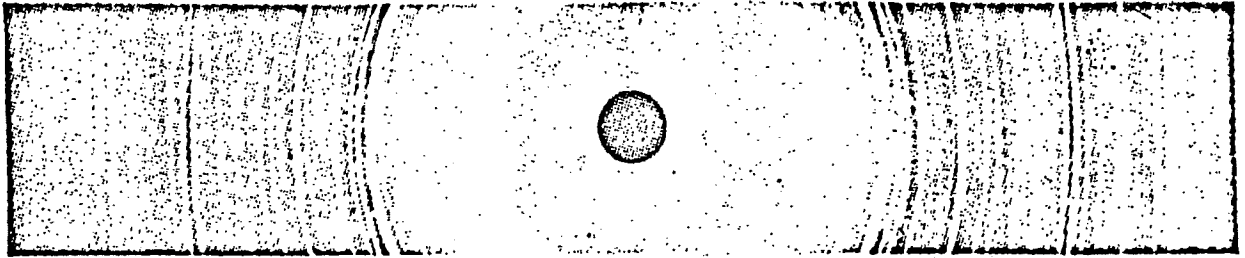
Most probable minerals present: Talc, Muscovite, Magnesite.

Visual Comparison

Talc, Chlorite, Magnesite

Minerals Detected

Talc, Chlorite, Magnestie



Comparison against A.S.T.M. index: 2 lines unmatched, 1.1739^oÅ,
1.29^oÅ

Patterns not included: 6-263 Muscovite -2M1, 7-25 Muscovite (IM)
7-32 Muscovite (2M1), 7-79 Forsterite (Olivine), 8-479 Magnesite

Most probable minerals present: Chlorite, Talc

Comparison against Italian Standards

Patterns not included: Muscovite (I35), Tremolite (I19 and I20)

Most probable minerals present: Chlorite, Talc.

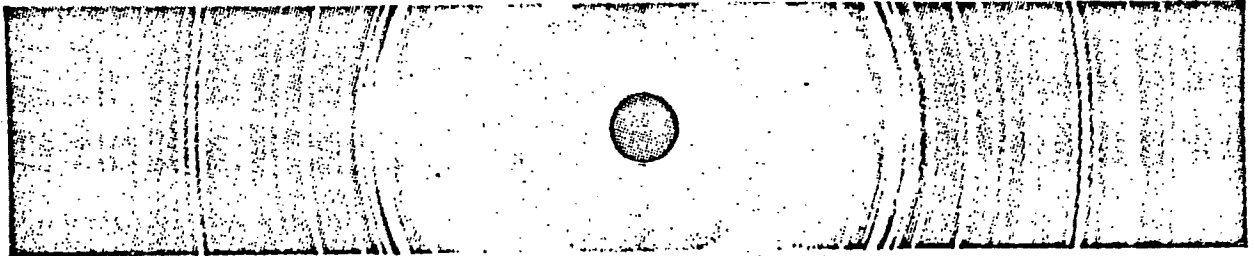
Visual Comparison

Chlorite, Talc

Minerals Present

Chlorite, Talc

SAMPLE SIP 4 CHLORITE



Comparison against A.S.T.M. index: 3 lines unmatched
1.1741^oÅ, 1.1318^oÅ, 1.0984^oÅ.

Patterns not included: 6-263 Muscovite -2M1, 7-32 Muscovite
(2M1), 8-479 Magnesite, 11-78 Dolomite, 13-437 Boric Acid.

Most probable minerals present: Chlorite, Talc

Comparison against Italian Standards

Patterns not included: Calcite (I34), Magnesite (I37),
Muscovite (I35), Tremolite (I19/I20), Dolomite.

Most probable mineral present: Chlorite, Talc

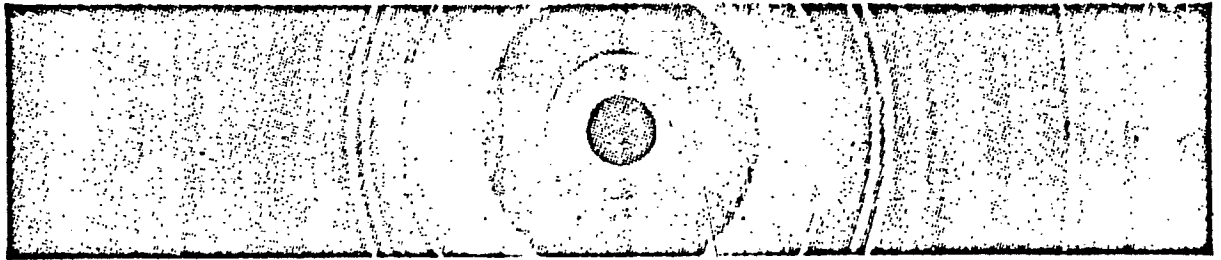
Visual Comparison

Chlorite, Talc

Minerals Present

Chlorite, Talc

SAMPLE SIP 5 TALC



Comparison against A.S.T.M. index:

Patterns not included: 5-586 Calcite, 7-25 Muscovite (IM), 7-77 Sheridanite (Chlorite), 7-79 Forsterite (Olivine), 7-166 Bavalite (Chlorite).

Most probable minerals present: Talc, Muscovite, Chlorite

Comparison against Italian Standards

Patterns not included: Chlorite (I42), Chlorite (I4), Magnesite (I6), Tremolite (I19/I20).

Most probable minerals present: Talc

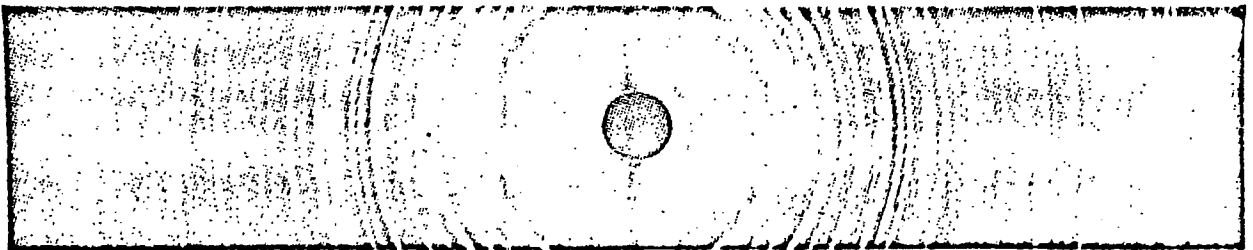
Visual comparison

Talc, Chlorite

Minerals Present

Talc, Chlorite

SAMPLE SIP 6 MUSCOVITE



Comparison against A.S.T.M. index: 3 lines unmatched, 1.7999 \AA , 1.3721 \AA , 1.2741 \AA .

Patterns not included: 3-881 Talc, 7-79 Forsterite (Olivine), 7-166 Bavalite (Chlorite), 7-183 Penninite (Chlorite), 8-479 Magnesite, 11-78 Dolomite, 19-770 Talc.

Most probable minerals present: Muscovite, Chlorite

Comparison against Italian Standards

Patterns not included: Magnesite (I37), Tremolite (I19 and I20), Dolomite

Most probable minerals present: Muscovite, Talc

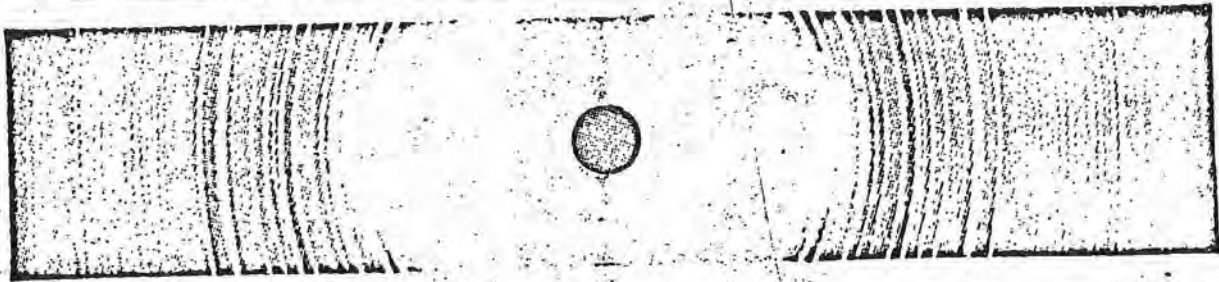
Visual Comparison

Muscovite, Calcite

Mineral Present

Muscovite, Calcite

SAMPLE SIP 7 MAGNESITE



Comparison against A.S.T.M. Index: 1 line unmatched 1.1092A⁰

Patterns not included: 5-586 Calcite, 6-263 Muscovite -2M1, 7-25 Muscovite (IM), 7-32 Muscovite (2M1), 7-160 Chlorite (Kotshubeite), 7-76 Ripidolite (Chlorite), 7-78 Thuringite (Chlorite), 7-166 Bavalite (Chlorite), 10-183 Penninite Chlorite, 13-437 Tremolite.

Most probable minerals present: Magnesite, Dolomite, Talc

Comparison against Italian Standards

Patterns not included: Calcite (I34), Chlorite (I4) Muscovite (I35), Tremolite (I19/I20).

Most probable minerals present: Magnesite, Dolomite, Talc

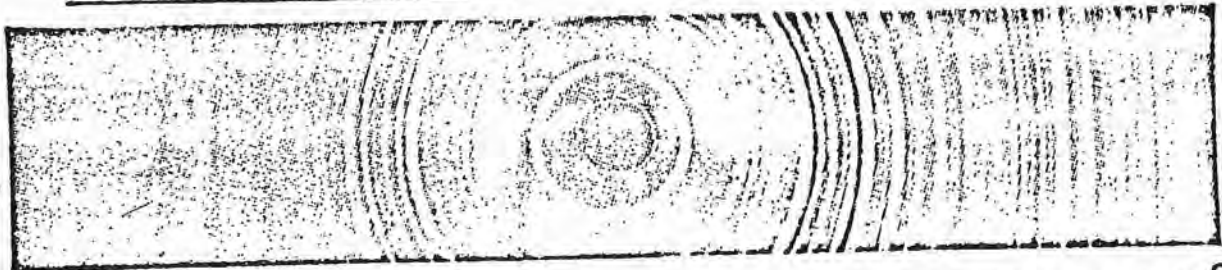
Visual Comparison

Magnesite, Talc

Minerals Present

Talc, Magnesite.

SAMPLE SIP 8 TREMOLITE



Comparison against A.S.T.M. Index: 1 line unmatched 1.1118A⁰

Patterns not included: 6-263 Muscovite -2M1, 7-25 Muscovite (IM), 7-32 Muscovite (2M1), 7-42 Muscovite (3T), 7-79 Forsterite (Olivine).

Most probable minerals present: Tremolite, Talc, Calcite

Comparison against Italian Standards

Patterns not included: Magnesite (I37), Chlorite (I4), Muscovite (I35).

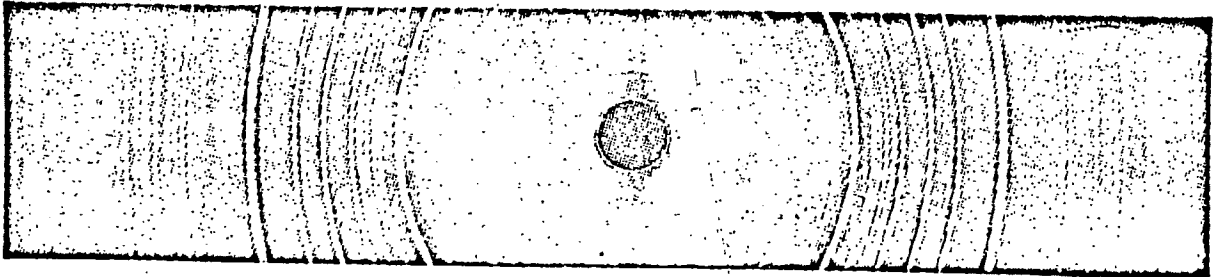
Most probable minerals present: Tremolite, Talc, Calcite

Visual Comparison

Tremolite, Talc

Minerals Present

Tremolite, Talc



Comparison against A.S.T.M. Index: 1 line unmatched 1.1094Å^o

Patterns not included: 3-881 Talc, 6-263 Muscovite -2M1, 7-25 Muscovite (1M), 7-32 Muscovite (2M1), 19-814 Muscovite 2M1 (Vanadian), 7-160 Chlorite (Kotschubeite), 7-79 Forsterite (Olivine), 13-437 Tremolite, 19-770 Talc.

Most probable minerals present: Dolomite, Muscovite

Comparison against Italian Standards

Patterns not included: Magnesite (I37), Chlorite (I4) Tremolite (I19/I20).

Most probable minerals present: Dolomite, Talc

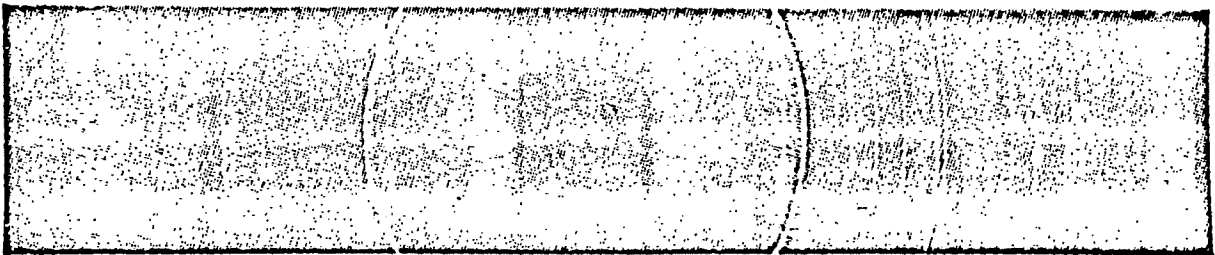
Visual Comparison

Dolomite, Muscovite, Calcite

Minerals Present

Dolomite, Muscovite, Calcite

SAMPLE SIP 10 CALCITE



Comparison against A.S.T.M. Index: 3 unmatched lines
1.2095Å^o, 1.1098Å^o, 1.0926Å^o

Patterns not included: 7-160 Chlorite (Kotschubeite), 7-79 Forsterite (Olivine), 13-437 Tremolite.

Most probable minerals present: Calcite, Muscovite

Comparison against Italian Standards

Patterns not included: Magnesite (I6), Tremolite (I19-I20).

Most probable minerals present: Calcite, Muscovite

Visual Comparison

Calcite

Minerals Present

Calcite, Muscovite

SAMPLE SIP 11 MAGNESITE



Comparison against A.S.T.M. Index: 1 unmatched line 1.1085⁰_A

Patterns not included: 5-586 Calcite, 7-25 Muscovite (IM),
7-160 Chlorite (Kotschubeite), 7-76 Ripidolite (Chlorite),
7-78 Thuringite (Chlorite), 7-166 Bavalite (Chlorite),
10-183 Penninite Chlorite, B & T Quartz.

Most probable minerals present: Magnesite, Dolomite, Talc

Comparison against the Italian Standards

Patterns not included: Calcite (I34), Chlorite (I4),
Muscovite (I35).

Most probable minerals present: Magnesite, Dolomite, Talc

Visual Comparison

Magnesite, Dolomite, Talc

Minerals Present

Magnesite, Talc, Dolomite

Examples of Patterns Obtained from
Rock Type Specimens and Their
Major Mineral Content from X-Ray
Comparison.

SAMPLE I1 TALC FROM FOOTWALL CONTACT

Comparison

Patterns not included: Magnesite (I37), Tremolite (I19/I20).

Most probable minerals present: Chlorite, Muscovite, Talc,
Dolomite.

Visual Comparison: Talc Chlorite, Calcite

Minerals Present: Talc Chlorite, Calcite.

SAMPLE I7 MICA SCHIST

Comparison

Patterns not included: Magnesite (I37), Talc (I46),
Tremolite (I19/I20).

Most probable minerals present: Muscovite, Talc, Quartz

Visual Comparison: Muscovite, Talc, Quartz

Minerals Present:

SAMPLE I12 FOOTWALL SAMPLE? AMPHIBOLITE

Comparison: 3 lines unmatched. 6.4653\AA 1.2819\AA 1.225\AA

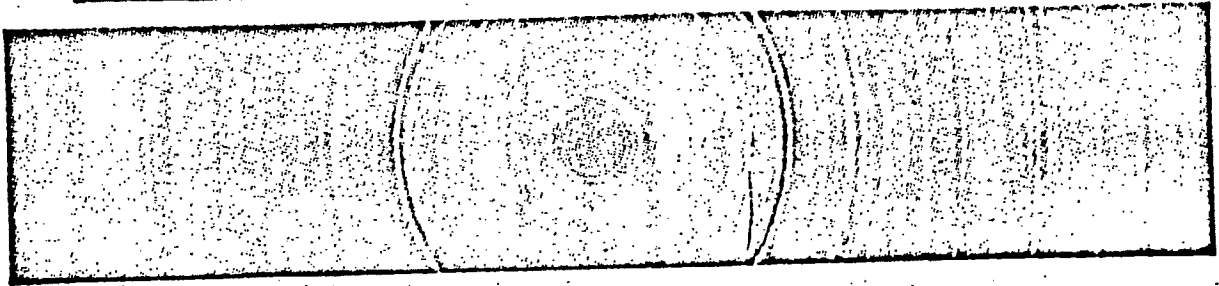
Patterns not included: Calcite (I34), Magnesite (I37),
Talc (I46), Talc (I5), Tremolite
(I19/I20).

Most probable minerals present: Muscovite, Dolomite, Quartz.

Visual Comparison: Muscovite, Chlorite, Quartz

Minerals Present:

SAMPLE I13 INCLUSION SHOWING PASSAGE INTO TALC BOTTOM TRANSIT



Comparison: 1 unmatched line 1.1541Å⁰

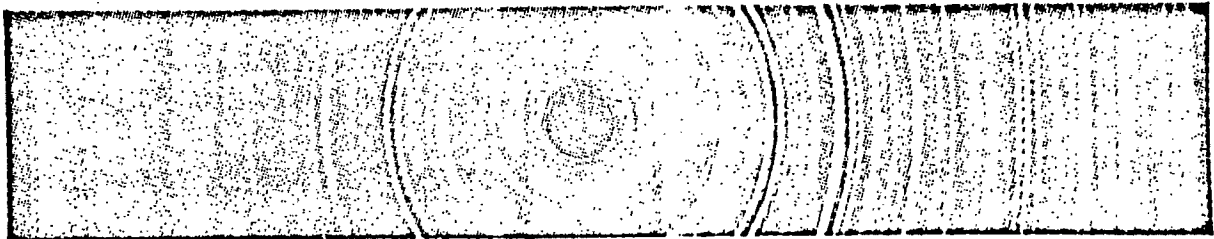
Patterns not included: Magnesite (I37), Muscovite (I35),
Tremolite (I19/I20), Dolomite

Most probable minerals present: Chlorite, Talc, Quartz

Visual Comparison: Chlorite, Muscovite, Quartz

Minerals Present: Chlorite, Muscovite, quartz

SAMPLE I15 TALC-FOOTWALL CONTACT



Comparison:

Patterns not included: Magnesite (I37), Tremolite (I19/I20).

Most probable minerals present: Chlorite, Talc, Muscovite,
Quartz.

Visual Comparison: Chlorite, Talc, Quartz

Minerals Present: Chlorite, Talc, Quartz

SAMPLE I16 FACE 1 INCLUSION BELOW SEAM

Comparison

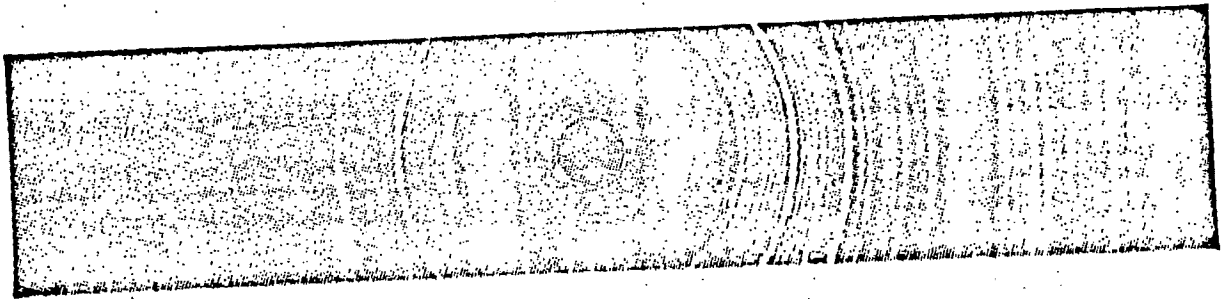
Patterns not included: Talc (I45), Tremolite (I19/I20)
Dolomite

Most probable minerals present: Muscovite, Chlorite,
Calcite, Quartz

Visual Comparison: Chlorite, Muscovite, Calcite, Quartz

Minerals Present: Chlorite, Muscovite, Calcite, Quartz

SAMPLE I17 FOOTWALL ROCK SAMPLE



Comparison: 2 unmatched lines 6.6957\AA , 1.6305\AA

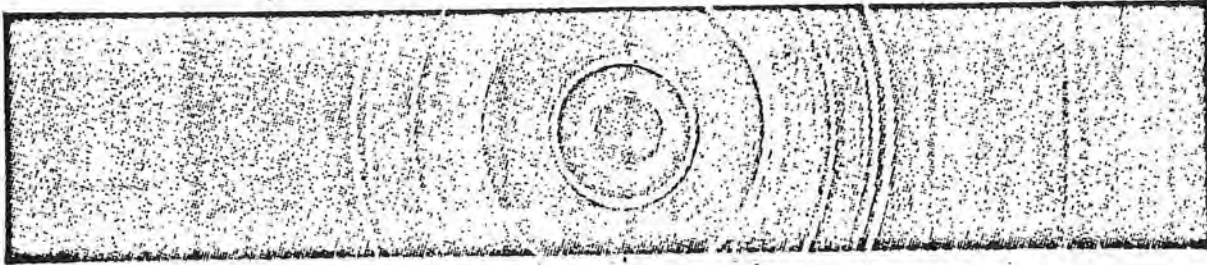
Patterns not included: Talc (I46), Chlorite (I42),
Muscovite (I35), Magnesite (I6), Tremolite (I19/I20), Dolomite.

Most probable minerals present: Calcite, Talc, Quartz

Visual Comparison: Calcite, Talc, Quartz

Minerals Present: Calcite, Talc, Quartz

SAMPLE I20 AMPHIBOLE SAMPLE FROM GUIANA LEVEL 1212



Comparison: 1 unmatched line 1.6309^o_A

Patterns not included: Chlorite (I42), Chlorite (I4),
Muscovite (I35), Magnesite (I6), Dolomite.

Most probable minerals present: Talc, Tremolite, Calcite,
Magnesite.

Visual Comparison: Talc, Tremolite, Chlorite

Minerals Present: Talc, Chlorite, Tremolite

SAMPLE I23 BLACK GNEISS



Comparison: 5 unmatched lines 6.3586^o_A, 1.449^o_A, 1.2278^o_A,
1.2121^o_A, 1.1520^o_A.

Patterns not included: Calcite (I34), Tremolite (I19/I20)

Most probable minerals present: Muscovite, Talc, Magnesite,
Quartz

Visual Comparison: Muscovite, Magnesite, Quartz

Minerals Present: Muscovite, Magnesite, Quartz

SAMPLE I25 LIMESTONE FOOTWALL

Comparison

Patterns not included: Calcite (I34), Tremolite (I19/I20).

Most probable minerals present: Talc, Chlorite, Quartz

Visual Comparison: Talc, Magnesite, Quartz

Minerals Present: Talc, Magnesite, Quartz

SAMPLE I27 LITHOLOGICAL INCLUSION

Comparison

Patterns not included: Chlorite (I42), Chlorite (I4),
Tremolite (I19/I20), Magnesite (I6),
Dolomite

Most probable minerals present: Talc, Calcite, Quartz

Visual Comparison: Talc, Calcite, Quartz

Minerals Present: Talc, Calcite, Quartz

SAMPLE I29 SAMPLE 6 FOOTWALL

Comparison: 2 unmatched lines 1.1526^oA, 6.3031^oA

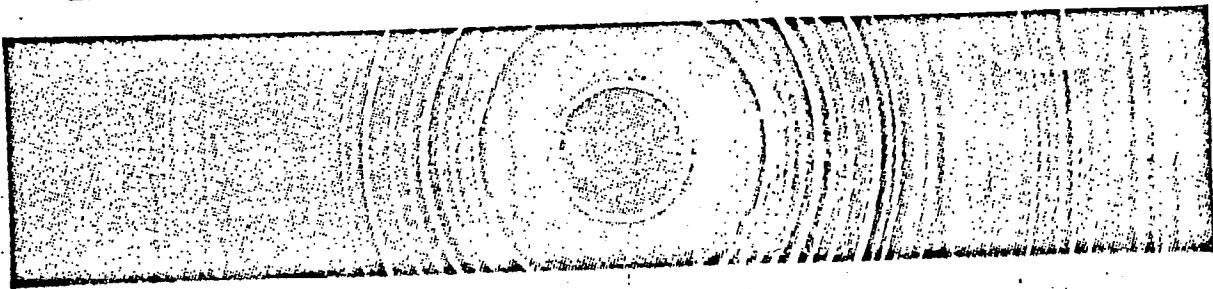
Patterns not included: Calcite (I34), Magnesite (I37),
Chlorite (I4), Talc (I5).

Most probable minerals present: Muscovite, Quartz, Dolomite,
Talc

Visual Comparison: Muscovite, Quartz

Minerals Present: Muscovite, Quartz

SAMPLE I31 BLACK INCLUSION



Comparison: 1 unmatched line 1.2145⁰_A

Patterns not included: Magnesite (I37), Talc (I5), Dolomite

Most probable minerals present: Muscovite, Calcite, Talc

Visual Comparison: Muscovite, Calcite

Minerals Present: Muscovite, Calcite

SAMPLE I34 TUNNEL WALL - MARBLE



Comparison

Patterns not included: Tremolite (I19/I20), Magnesite (I6)

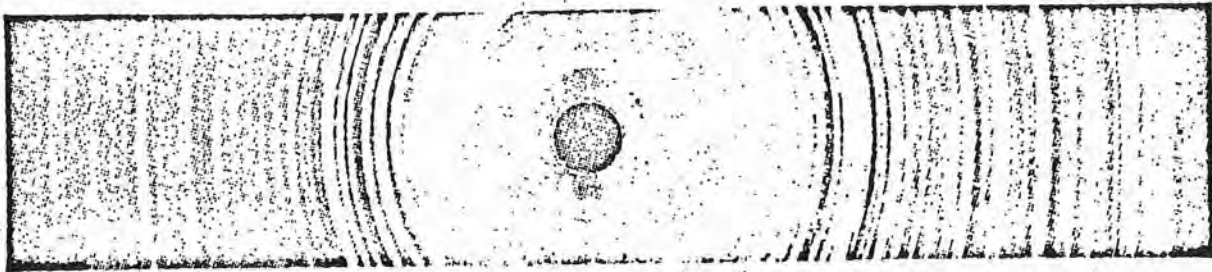
Most probable minerals present: Calcite, Muscovite, Talc

Visual Comparison, Calcite

Minerals Present Calcite

Examples of Patterns Obtained
from the Carbonate Specimens
and their Major Mineral Compo-
sition Obtained from Comparison
with Standards.

SAMPLE I4 FACE 10 AMPHIBOLE



Comparison: 3 unmatched lines 1.2586\AA , 1.0823\AA , 1.074\AA

Patterns not included: Chlorite (I42), Chlorite (I4)
Dolomite

Most probable minerals present: Tremolite, Talc, Magnesite

Visual Comparison: Talc, Tremolite, Magnesite

Minerals Present: Talc, Tremolite, Magnesite

SAMPLE I6 QUARTZ

Comparison

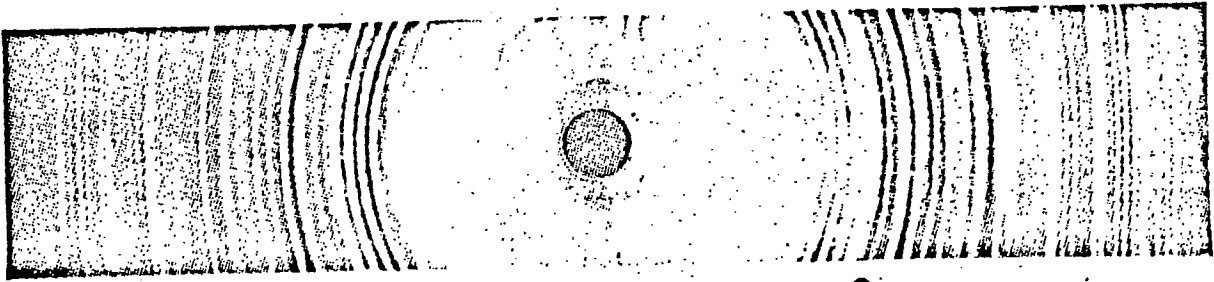
Patterns not included: Calcite (I34), Chlorite (I4)
Tremolite (I19/I20)

Most probable minerals present: Magnesite, Dolomite,
Talc

Visual Comparison: MAGNESITE, Talc

Minerals Present: Magnesite, Talc

SAMPLE I11 CARBONATE - TALC INCLUSION



Comparison: 1 unmatched line 1.2143Å⁰

Patterns not included: Chlorite (I42), Chlorite (I4)

Most probable minerals present: Magnesite, Dolomite, Talc

Visual Comparison: Talc, Magnesite, Calcite

Minerals Present: Talc, Magnesite, Calcite

SAMPLE I14 SEAM 4 INCLUSION IN TALC

Comparison

Patterns not included: Magnesite (I37), Chlorite (I4),
Muscovite (I35), Tremolite (I19/I20)

Most probable minerals present: Dolomite, Talc

Visual Comparison: Talc, Dolomite

Minerals Present: Talc, Dolomite

SAMPLE I18 FACE 3 MAGNESITE AND TALC

Comparison:

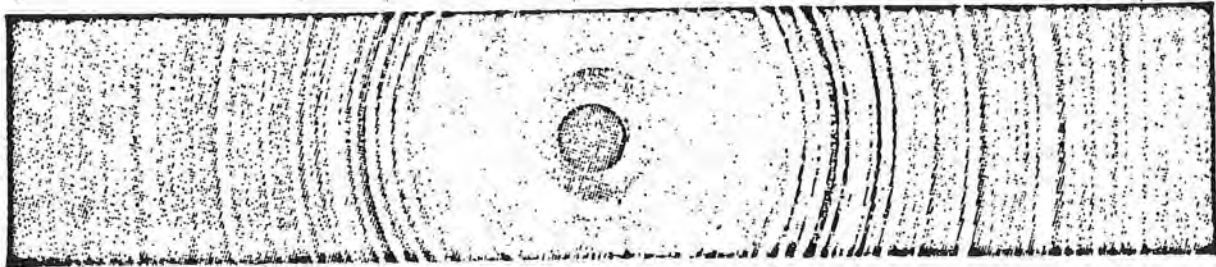
Patterns not included: Talc (I15), Tremolite (I19/I20)

Most probable minerals present: Dolomite, Magnesite,
Chlorite

Visual Comparison: Dolomite, Talc Chlorite

Minerals Present: Dolomite, Talc, Chlorite.

SAMPLE I 19 IMPURITY IN TALC AND QUARTZ



Comparison:

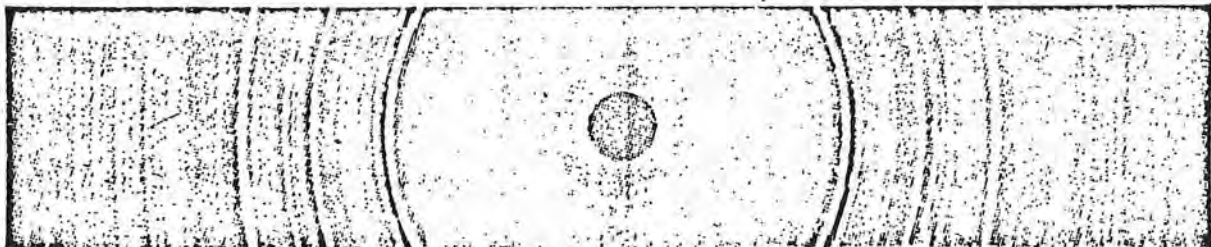
Patterns not included: Magnesite (I37)

Most probable minerals present: Tremolite, Dolomite,
Muscovite, Talc

Visual Comparison: Talc, Tremolite, Magnesite.

Minerals Present: Talc, Tremolite, Magnesite

SAMPLE I21 FACE 2 OCCLUSION (MAGNESITE)



Comparison:

Patterns not included: Calcite (I34), Chlorite (I4),
Muscovite (I35), Tremolite (I19/I20)

Most probable minerals present: Dolomite, Magnesite, Talc

Visual Comparison: Talc, Magnesite, Dolomite

Minerals Present: Talc, Magnesite, Dolomite

SAMPLE I22 MAGNESITE, DOLOMITE, TALC



Comparison:

Patterns not included: Calcite (I34), Talc (I45), Talc (I46)
Muscovite (I35), Tremolite (I19/I20).

Most probable minerals present: Dolomite, Magnesite,
Chlorite, Talc.

Visual Comparison: Talc, Dolomite.

Minerals Present: Talc, Dolomite

SAMPLE I30 TALC AND OTHERS



Comparison:

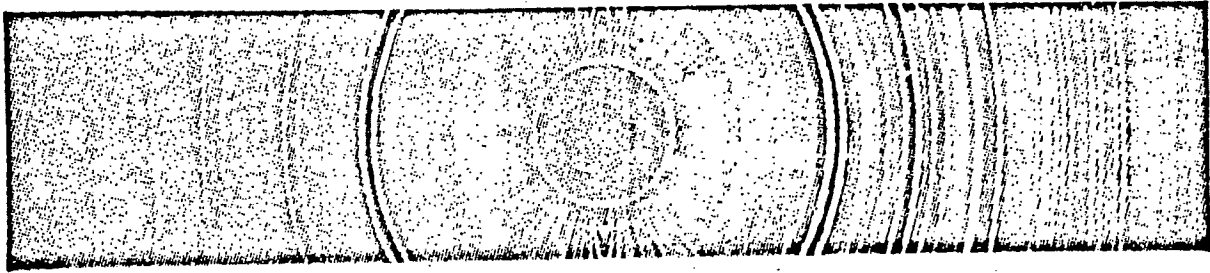
Patterns not included: Magnesite (I37), Talc (I5),
Tremolite (I19/I20).

Most probable minerals present: Dolomite, Chlorite,
Muscovite, Talc.

Visual Comparison: Talc, Chlorite

Minerals Present: Talc, Chlorite

SAMPLE I35 MASSIVE CARBONATE. END OF WORKING



Comparison:

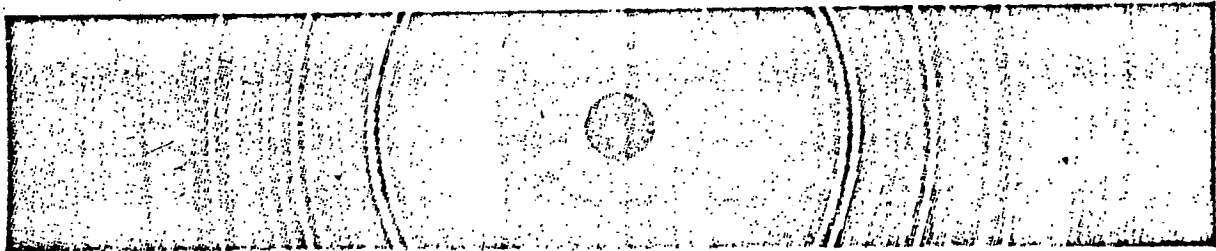
Patterns not included: Tremolite (I19/I20)

Most probable minerals present: Muscovite, Magnesite,
Chlorite

Visual Comparison: Magnesite, Talc, Chlorite

Minerals Present: Magnesite, Talc, Chlorite

SAMPLE I37 CARBONATE AND TALC



Comparison

Patterns not included: Calcite (I34), Chlorite (I4),
Muscovite (I35).

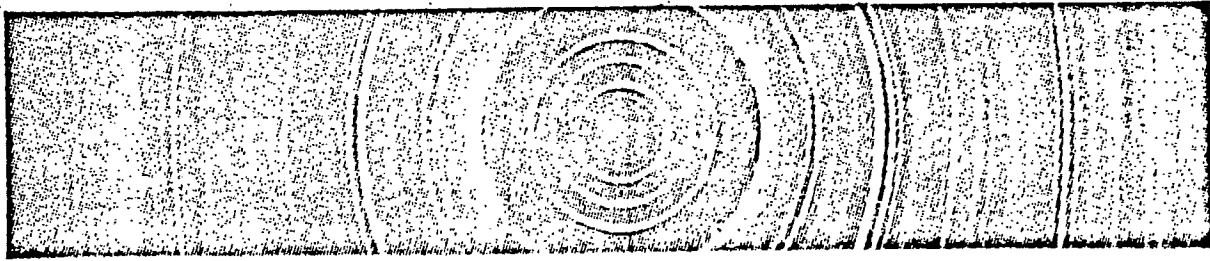
Most probable minerals present: Magnesite, Dolomite, Talc

Visual Comparison: Magnesite, Talc

Minerals Present: Magnesite, Talc

Examples of Patterns and
Major Mineral Content of
Those Specimens Classified
as Talc Types Obtained by
Comparison.

SAMPLE I2 SORTING PIECES



Comparison

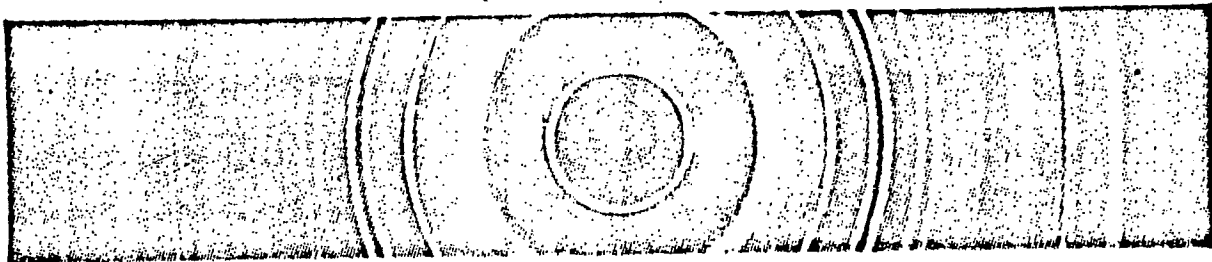
Patterns not included: Tremolite (I19/I20).

Most probable minerals present: Chlorite, Magnesite, Talc

Visual Comparison: Chlorite, Talc

Minerals Present: Chlorite, Talc

SAMPLE I3 COLOURED TALC



Comparison:

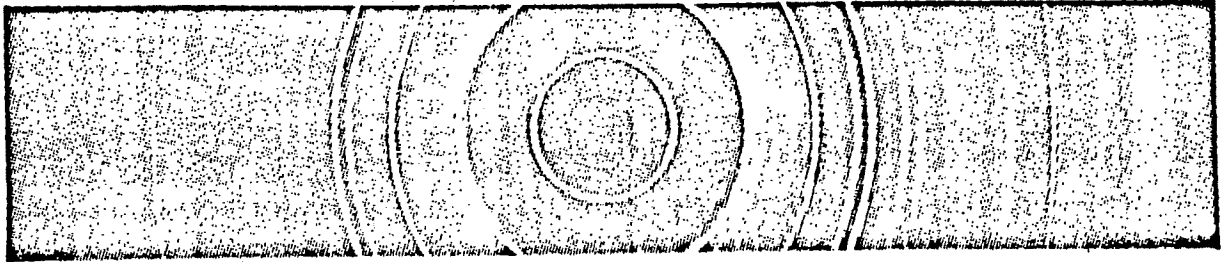
Patterns not included: Chlorite (I42), Chlorite (I4),
Muscovite (I35), Magnesite (I6), Tremolite (I19/I20), Dolomite.

Most probable minerals present: Talc

Visual Comparison: Talc

Minerals present: Talc

SAMPLE I5 GENERAL ORE



Comparison: 2 unmatched lines 18.1157^o 7.0073^o

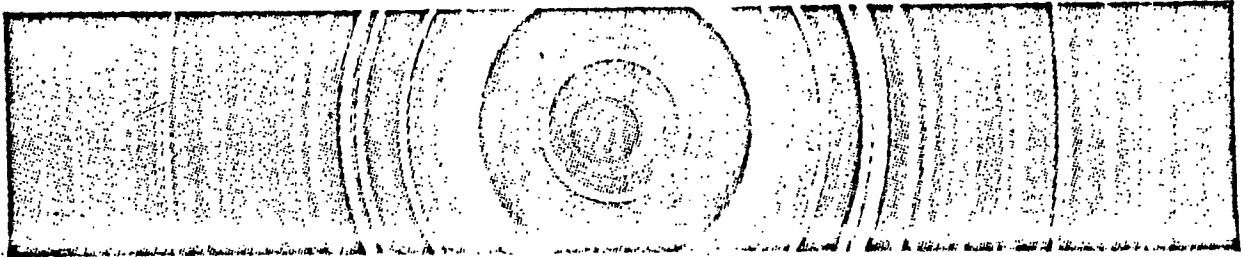
Patterns not included: Chlorite (I42), Chlorite (I4),
Muscovite (I35), Dolomite.

Most probable minerals present: Talc, Magnesite

Visual Comparison: Talc

Minerals present: Talc

SAMPLE I8 MASSIVE TALC



Comparison

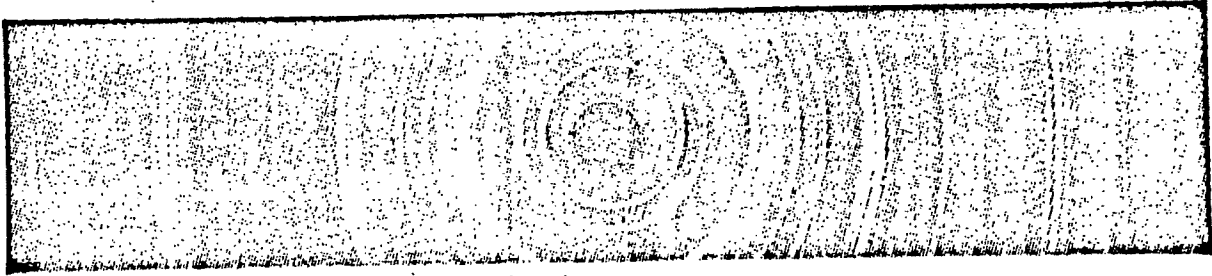
Patterns not included: Magnesite (I6), Tremolite (I19/I20).

Most probable minerals present: Talc, Chlorite

Visual Comparison: Talc, Chlorite

Minerals Present: Talc, Chlorite

SAMPLE I9 FACE 1 GREY TALC



Comparison

Patterns not included: Calcite (I34), Magnesite (I37),
Muscovite (I35), Magnesite (I6), Tremolite (I19/I20).

Most probable minerals present: Talc, Chlorite

Visible Comparison: Talc, Chlorite

Minerals Present: Talc, Chlorite

SAMPLE I10 GRANULAR TALC

Comparison

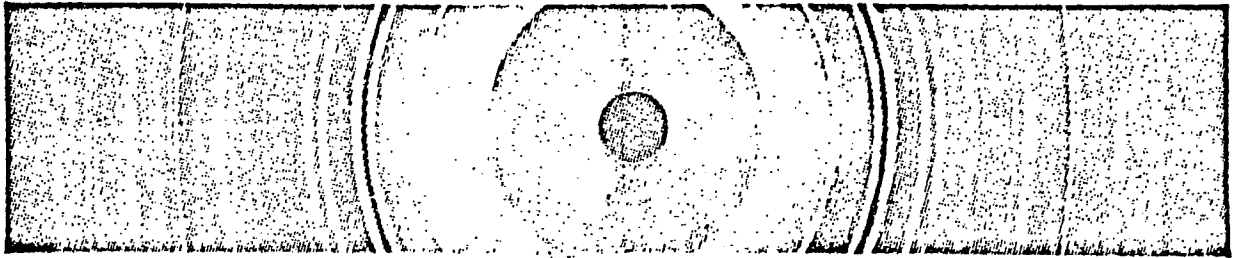
Patterns not included: Calcite (I34), Magnesite (I37),
Chlorite (I42) Chlorite (I4),
Muscovite (I35), Magnesite (I6)
Tremolite (I19/I20)

Most probable minerals present: Talc, Dolomite

Visible Comparison: Talc, Dolomite

Minerals Present: Talc, Dolomite

SAMPLE I24 TALC FACE 2



Comparison:

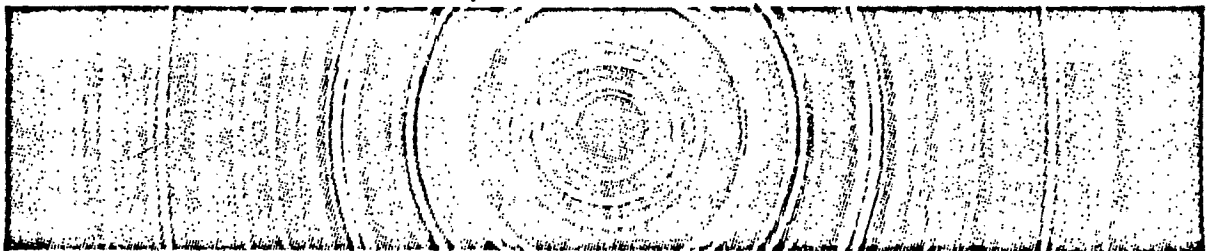
Patterns not included: Muscovite (I35), Tremolite (I19/I20)
Magnesite (I6).

Most probable minerals present: Talc, Chlorite, Dolomite,
Magnesite

Visual Comparison: Dolomite, Magnesite, Talc

Minerals Present: Dolomite, Magnesite, Talc

SAMPLE I26 TALC INCLUSIONS



Comparison

Patterns not included: Calcite (I34), Tremolite (I19/I20)

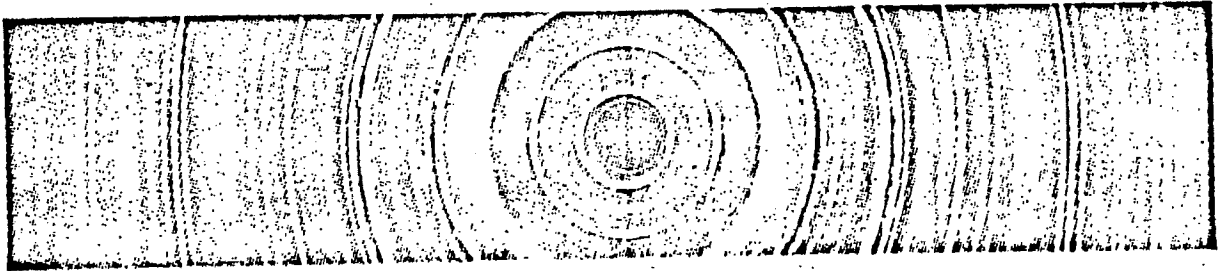
Most probable minerals present: Talc, Chlorite, Dolomite

Visual Comparison: Talc, Chlorite

Minerals Present: Talc, Chlorite

112

SAMPLE I28 QUARTZ TALC



Comparison

Patterns not included: Muscovite (I35), Tremolite (I19/I20)
Magnesite (I6), Dolomite

Most probable minerals present: Chlorite, Talc, Quartz

Visual Comparison: Chlorite, Talc, Quartz

Minerals Present: Chlorite, Talc, Quartz

SAMPLE I32 OCCLUSION FACE 2



Comparison

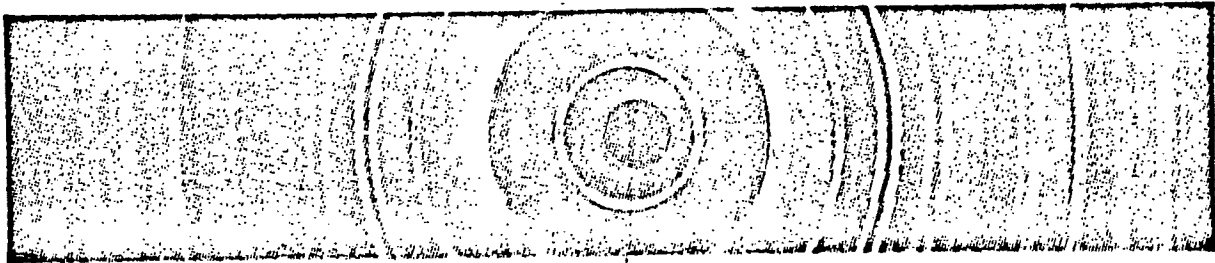
Patterns not included: Muscovite (I35), Tremolite (I19/I20)
Dolomite

Most probable minerals present: Chlorite, Talc, Magnesite

Visual Comparison: Chlorite, Talc

Minerals Present: Chlorite, Talc

SAMPLE I33 TALC END OF WORKING



Comparison:

Patterns not included: Muscovite (I35), Tremolite (I19/I20)

Most probable minerals present: Talc, Chlorite, Magnesite
Dolomite

Visual Comparison: Talc, Chlorite, Magnesite

Minerals Present: Talc, Chlorite, Magnesite

SAMPLE I36 GREY TALC

Comparison: 2 unmatched lines 1.2204\AA ; 1.1517\AA

Patterns not included: Calcite (I34), Talc (I46)
Tremolite (I19/I20).

Most probable minerals present: Chlorite, Muscovite, Talc

Visual Comparison: Chlorite, Talc

Minerals Present: Chlorite, Talc

SAMPLE I38 TALC AND PYRITE

Comparison: 1 unmatched line 1.041\AA

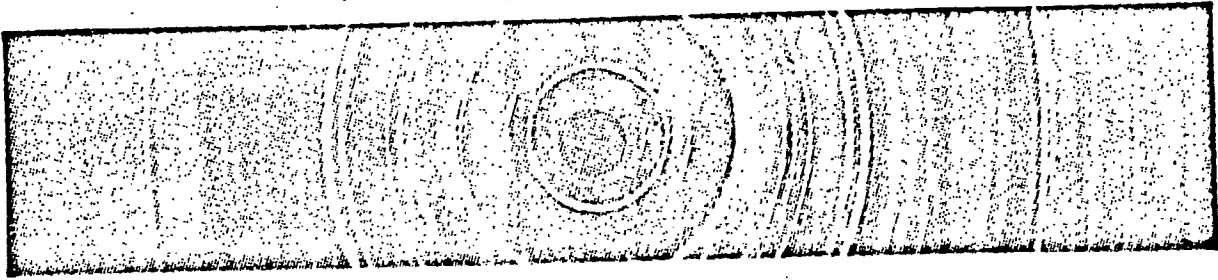
Patterns not included: Chlorite (I42), Chlorite (I4),
Muscovite (I35), Tremolite (I19/I20)

Most probable minerals present: Talc, Calcite

Visual Comparison: Talc, Calcite

Minerals Present: Talc, Calcite

SAMPLE I39 S-'Q' FROM CRUSHER



Comparison

Patterns not included: Muscovite, (I35), Tremolite (I19/I20),
Magnesite (I6).

Most probable minerals present: Talc Chlorite

Visual Comparison: Talc, Chlorite, Calcite

Minerals Present: Talc, Chlorite, Calcite

SAMPLE I40 PLATEY TALC

Comparison:

Patterns not included: Tremolite (I19/I20)

Most probable minerals present: Talc, Magnesite, Chlorite

Visual Comparison: Talc, Chlorite, Magnesite

Minerals Present: Talc, Chlorite, Magnesite

SAMPLE I41 GOOD SPECIMEN No.2.

Comparison:

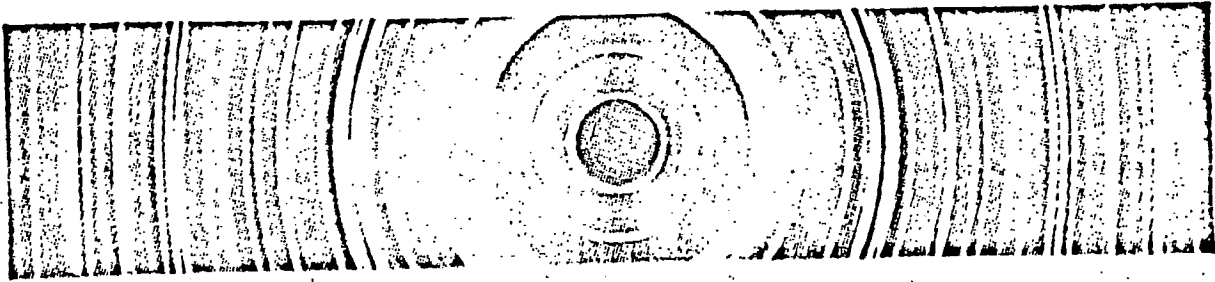
Patterns not included: Calcite (I34), Muscovite (I35),
Tremolite (I19/I20), Magnesite (I6),
Dolomite

Most probable minerals present: Talc, Chlorite

Visual Comparison: Talc, Chlorite

Minerals Present: Talc, Chlorite

SAMPLE I42 COLOURED TALC No.1.



Comparison

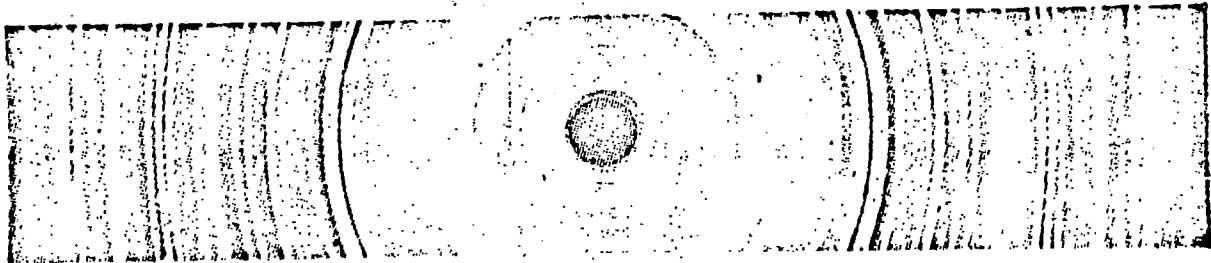
Patterns not included: Magnesite (I37), Talc (I46), Muscovite (I35), Dolomite.

Most probable minerals present: Chlorite, Talc

Visual Comparison: Chlorite, Talc

Minerals Present: Chlorite, Talc

SAMPLE I43 FIBROUS TALC FACE 10



Comparison: 2 unmatched lines 4.8928Å, 4.4431Å

Patterns not included: Calcite (I34), Magnesite (I37), Muscovite (I35), Tremolite (I19/I20)

Most probable minerals Present: Chlorite, Talc

Visual Comparison: Chlorite, Talc

Minerals Present: Chlorite, Talc

SAMPLE I44 PURE TALC FACE 1

Comparison: 1 unmatched line 1.0798

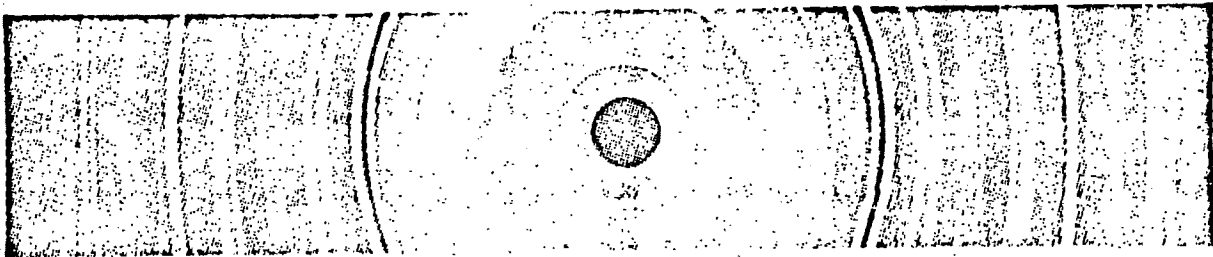
Patterns not included: Magnesite (I37), Talc (I42),
Muscovite (I35), Tremolite (I19/I20)

Most probable minerals present: Chlorite, Talc, Dolomite

Visual Comparison: Talc, Magnesite, Chlorite

Minerals Present: Talc, Magnesite, Chlorite

SAMPLE I45 GOOD SPECIMEN FACE 1



Comparison: 2 unmatched lines 1.0882Å, 1.0505Å

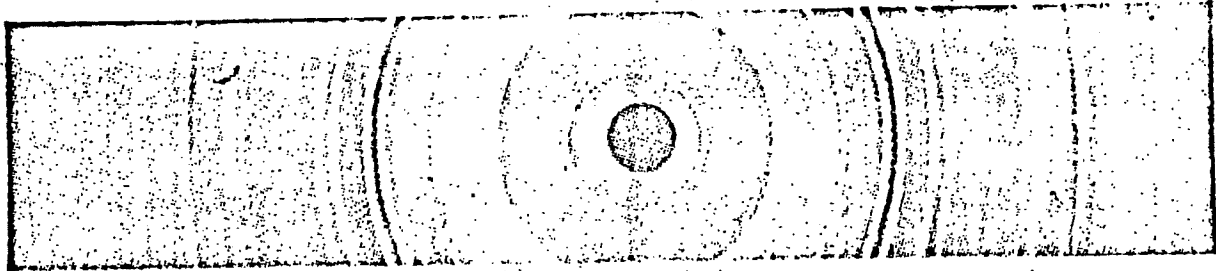
Patterns not included: Calcite (I34), Chlorite (I42), Chlorite (I4)
Muscovite (I35), Magnesite (I6), Tremolite (I19/I20), Dolomite.

Most probable minerals present: Talc, Magnesite

Visual Comparison: Talc

Minerals Present: Talc

SAMPLE I46 COLOURED TALC FACE 3



Comparison:

Patterns not included: Chlorite (I42), Chlorite (I4), Muscovite
(I35), Tremolite (I19/I20).

Most probable minerals present: Talc, Magnesite

Visual Comparison: Talc, Magnesite

Minerals Present: Talc, Magnesite

Specimen Patterns and Comparison Data for
Samples of Old Powders and ØØØØ Shipments

SAMPLE BATCH 6 POWDER F1 PW.J. 035

Comparison: 1 unmatched line 8.1972⁰_A

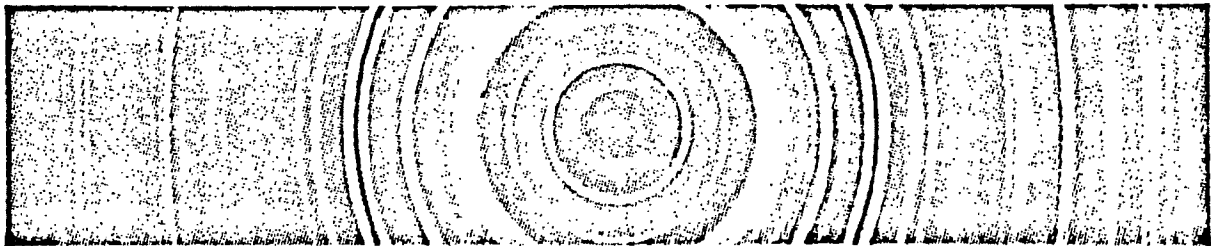
Patterns not included: Muscovite (I35), Tremolite (I19/I20)

Most probable minerals present: Talc, Magnesite, Chlorite

Visual Comparison: Talc, Chlorite, Magnesite

Minerals Present: Talc, Chlorite, Magnesite

SAMPLE BATCH 8 POWDER (S and G) PW.J. 035



Comparison

Patterns not included: Magnesite (I6), Tremolite (I19/I20)

Most probable minerals present: Talc, Magnesite, Boric Acid

Visual Comparison: Talc, Chlorite, Boric Acid

Minerals Present: Talc, Chlorite, Boric Acid

SAMPLE BATCH 9 POWDER T4 P.W.J. 035

Comparison: 1 unmatched line 1. 2587⁰_A

Patterns not included: Tremolite (I19/I20)

Most probable minerals present: Talc, Chlorite, muscovite,
Magnesite, Boric Acid

Visual Comparison: Talc, Chlorite, Boric Acid

Minerals Present: Talc, Chlorite, Boric Acid

119

SAMPLE BATCH 10 POWDER SK1BP PW.J. 035

Comparison

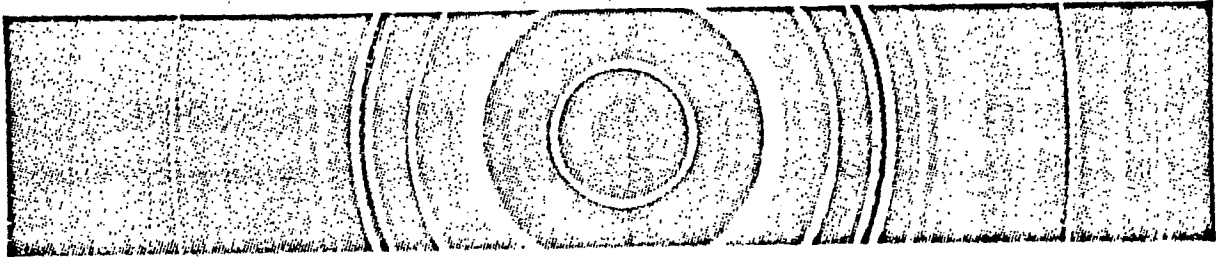
Patterns not included: Calcite (I34), Muscovite (I35),
Tremolite (I19/I20), Dolomite

Most probable minerals present: Talc, Chlorite, Magnesite,
Boric Acid.

Visual Comparison: Talc, Chlorite, Boric Acid

Minerals Present: Talc, Chlorite, Boric Acid

SAMPLE BATCH 11 POWDER LD18P PW.J. 035



Comparison: 1 unmatched line 8.1363⁰_A

Patterns not included: Magnesite (I6), Tremolite (I19/I20)
Dolomite

Most probable minerals present: Talc, Chlorite, Boric Acid

Visual Comparison: Talc, Chlorite, Boric Acid, Magnesite

Minerals Present: Talc, Chlorite, Boric Acid, Magnesite

SAMPLE BATCH 12 TALC 1960 PW.J. 025

Comparison: 1 unmatched line 8.12⁰_A

Patterns not included: Tremolite (I19/I20)

Most probable minerals present: Talc, muscovite, chlorite,
Boric Acid.

Visual Comparison: Talc, Chlorite, Boric Acid, Magnesite

Minerals Present: Talc, Chlorite, Boric Acid, Magnesite

120

SAMPLE BATCH 13 TALC 1961 PW.J. 026

Comparison

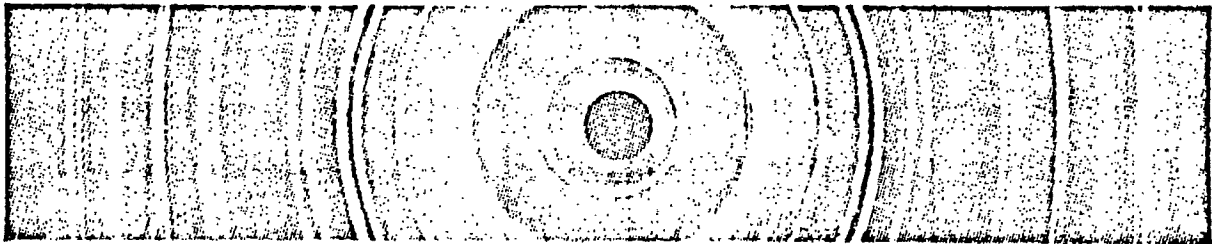
Patterns not included: Calcite (I34), Muscovite (I35)
Tremolite (I19/I20)

Most probable minerals present: Talc, Chlorite, Magnesite
Boric Acid

Visual Comparison: Talc, Chlorite, Magnesite, Boric Acid

Minerals Present: Talc, Chlorite, Magnesite, Boric Acid

SAMPLE BATCH 19 S.S. CATHERINA W. 02/05/72



Comparison

Patterns not included: Tremolite (I19/I20)

Most probable minerals present: Talc, Chlorite, Magnesite

Visual Comparison: Talc, Chlorite, Magnesite

Minerals Present: Talc, Chlorite, Magnesite

SAMPLE BATCH 2 TALC S.S. EDNA 'B' 14/02/72

Comparison

Patterns not included: Talc (I45), Tremolite (I19/I20)

Most probable minerals present: Talc, Chlorite

Visual Comparison: Talc, Chlorite

Minerals Present: Talc, Chlorite

CONCLUSIONS

The optical examination has shown that there are a large number of minerals associated with the rock types found both in the talc seam and in the associated rocks. The footwall rocks in contact with the talc are mainly composed of the minerals quartz, muscovite, chlorite, garnet, and some carbonate material both calcite and magnesite. Minor minerals in the footwall contact rocks include epidote, microcline, tremolite and actinolite, sphene, rutile, hornblende, rare talc, biotite, pyrite, pyrrhotite and chalcopryite. Rock type inclusions into the talc have similar compositions to the footwall rocks but with higher muscovite and chlorite contents. The muscovite was generally an iron rich variety (phengite), while two forms of chlorite were observed namely sheridanite and penninite. Other talc inclusions consist mainly of carbonate minerals, calcite and magnesite in varying quantities. It is with these nodules that some tremolite is found. The rocks further away from the talc seams, namely the gneiss, become richer in quartz and microcline and below these marble occurs.

The carbonate specimens examined by optical means showed that the carbonate minerals, calcite and magnesite, were accompanied by talc, chlorite, tremolite, muscovite, rutile and pyrite, all in minor amounts. In general the carbonate inclusions were large and very discrete in the talc seam itself.

The specimens examined, which can be classified as talc samples, were found to be in the main composed of talc with chlorite as the major contaminant. Some specimens, however, were predominantly composed of chlorite with minor talc inclusions. Other minerals found in association with the talc specimens included garnet, rutile and magnesite with rare tremolite and a quartz or serpentine inclusion. Some differences were observed in the talc itself, some of the talc appearing to be a little murky in texture. X-ray pictures of the clear and murky material showed no differences however.

The powder X-ray examination confirmed the major minerals occurring in the hand specimens and a classification was possible into the three groups already mentioned, i.e. rock types, carbonate samples and talc specimens. The only asbestos type mineral to be detected in the hand samples was tremolite, which was found in three of the specimens. The tremolite was associated with carbonate minerals, namely magnesite and calcite, no tremolite was detected in the talc type specimens. Chlorite was, however, very common in the talc types, some of the specimens being very nearly pure chlorite in composition. There appeared to be some association of the chlorite with coloured talc specimens, especially those with a greyish colour. Other colour variations due to rutile were not detected by X-ray examination.

The examination of consecutive samples at face 1 in the mine showed that the chlorite content can vary very drastically over a 6ft thick section of the talc seam. Patterns obtained from several shipments of ~~00000~~ talc showed that chlorite, together with carbonate material, were the major contaminant minerals. This was also true of powder samples ranging back to 1949 in which the only observable difference was the presence of boric acid.

The electron microscope examination of the powdered samples showed that a difference could be drawn between particles produced from the various samples. The carbonates and rock types on the whole produced compact fibre free particles. The talc specimens were, however, plate-like in appearance with varying quantities of lath like particles coupled with fibres which were textile in appearance. Both lath and textile types of particles were not composed of minerals associated with the commercial asbestos industry. Particles formed from the amphibole mineral found at the mine were hardly fibrous in character, the majority of the tremolite breaking to give compact particles. Those fibres formed were short and had a very large diameter when compared with the commercial varieties of asbestos. No amphibole or chrysotile mineral was detected in any of the numerous powders examined.

The Italian talc ~~00000~~ contains observable quantities of chlorite and carbonate minerals and could contain any one of the following minerals in very minor amounts: muscovite, quartz, tremolite, garnet and rutile. If small pieces of footwall rock were to contaminate the ore during production, several of the other listed minerals found in the rock type specimens could appear in the shipped product. It is unlikely that they would be present in detectable amounts.

F.D. POOLEY
Project Supervisor

Exhibit 222



1 ALEXANDER G. CALFO (State Bar No. 152891)
acalfo@kslaw.com

2 JULIA E. ROMANO (State Bar No. 260857)
jromano@kslaw.com

3 BRIAN PRIESTLEY (State Bar No. 301586)
bpriestley@kslaw.com

4 **KING & SPALDING LLP**

5 633 West 5th Street, Suite 1700

6 Los Angeles, CA 90071

7 Telephone: +1 213 443 4355

8 Facsimile: +1 213 443 4310

9 Attorneys for Defendant

10 **JOHNSON & JOHNSON CONSUMER INC.**

11 (formerly known as JOHNSON & JOHNSON
12 CONSUMER COMPANIES, INC.)

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF LOS ANGELES**

15 JESUS PAYAN and FRANCISCA PAYAN,

16 Plaintiff,

17 v.

18 CBS CORPORATION, et al.,

19 Defendants.

JCCP 4674

Case No. BC608412

**DECLARATION OF JOHN HOPKINS IN
SUPPORT OF DEFENDANT JOHNSON
& JOHNSON CONSUMER INC.'S
MOTION FOR SUMMARY JUDGMENT,
OR IN THE ALTERNATIVE, SUMMARY
ADJUDICATION OF ISSUES**

*[Filed Concurrently with JJCI's Notice of
Motion and Motion; Separate Statement Of
Undisputed Material Facts; Declaration Of
Julia E. Romano; Compendium of Evidence;
[Proposed] Order]*

Date: August 12, 2016

Time: 9:00 a.m.

Dept.: 1

Judge: Hon. Joseph R. Kalin

Action Filed: January 27, 2016

Trial Date: August 22, 2016

27 ///

1 I, John Hopkins, declare:

2 1. My name is John Hopkins. I hold a BSc (Bachelor of Science) degree with Honors
3 in Chemistry & Biochemistry from the University of St Andrews, Scotland, UK. I also hold a PhD
4 degree in Toxicology from the University of Dundee, Scotland, UK.

5 2. I am a Chartered Biologist, holding the Diploma, C Biol.

6 3. My academic background is in the field of Toxicology.

7 4. I make this declaration based on my personal knowledge gained during my
8 employment with the Johnson & Johnson Consumer Companies (hereinafter referred to as
9 "Johnson & Johnson") as described below, from my personal review of documents in the files of
10 Johnson & Johnson during certain of the times I worked for the Company, as well as information
11 conveyed to me in the ordinary course of business by other employees of Johnson & Johnson.

12 5. Prior to joining Johnson & Johnson in 1976, I undertook some teaching to medical
13 students followed by employment as a toxicologist in the pharmaceutical industry. I was a
14 founding member of the British Toxicology Society in 1979.

15 6. During the period 1976-2000, I was in the employment of Johnson & Johnson. I
16 was employed in the United Kingdom (1976-94), in the United States for the four years 1995-
17 1998 inclusive and in France (1999-2000).

18 7. Since 2000 I am the President my own Company, Innovant Research. This is an
19 independent Consultancy in the field of Toxicology, Product Safety and Risk Assessment.

20 8. For the whole of the period from 1976 onwards I have been familiar with the
21 literature and debate as to talc safety. Through my Company I am a Member of the UK Trade
22 Association, CTPA Scientific Advisory Committee and the CTPA Talc Committee.

23 9. I am also familiar with the history and background of the sourcing, standards and
24 specification of talc as used by Johnson & Johnson on a worldwide basis. During my employment
25 for Johnson & Johnson in the UK, I was in regular contact with medical and scientific colleagues
26 in the United States on all matter relating to talc safety.

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[illegible]

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2 19. Confirmation of the absence of asbestos on a historical basis has been reported in a
3 Johnson & Johnson internal report from 1966 that summarized the results of 13 samples of talc
4 from the Company Museum, and dating from the period 1910-1964.

5 **C. Audits of Talc Mines**

6 20. As a part of a program to ensure that the talc used in Johnson & Johnson products
7 was free from asbestos, an independent geological audit of the talc mine in Italy was conducted in
8 1972 by Professor Fred Pooley from the Department of Mineral Exploitation, University of Wales,
9 UK.

10 21. Professor Pooley is considered a world class expert in talc mineralogy and geology.

11 22. The audits included a systematic geological sampling of all areas of the mines,
12 including the non-talc bearing areas.

13 23. The conclusion of the Audit was that there was zero evidence of asbestos in the
14 geology and mineralogy of the Italian mine.

15 24. Additionally Professor Pooley examined a sample of talc dating from 1949, as used
16 by Johnson & Johnson in the UK. It was reported that the quality had not changed.

17 **D. Sampling of Talc**

18 25. Since 1975, Johnson & Johnson has conducted a regular monitoring program of
19 samples of talc from all mines supplying to affiliate Johnson & Johnson companies throughout the
20 world. Although Italian talc was not used in the United States after 1967, it was used in Europe
21 until 1999. The monitoring program included assay for asbestos, silica and quartz. Assay has been
22 conducted by an independent external laboratory in the United States.

23 26. In addition, it has been a requirement of the Raw Material specification since 1975,
24 for each batch of talc to be supplied to Johnson & Johnson to be free from asbestos and in
25 compliance to the PCPC (CTFA) Talc Monograph. This has required the supplier to confirm
26 purity of every batch supplied using state of the art techniques.

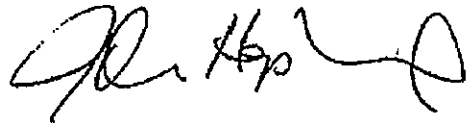
27 ///

1 27. Based on the absence of asbestos contamination in historical talc samples; an in-
2 house raw material specification requirement dating from at least 1949, for absence of asbestos in
3 talc; no evidence of asbestos in the mineralogy and geology in the talc mines supplying Johnson &
4 Johnson in the United States; and no evidence of asbestos contamination in each production batch
5 sampling as certified by the suppliers, from the period 1975 to present, it is my expert opinion that
6 the Johnson & Johnson baby powder Mr. Payan was allegedly exposed to while serving in the
7 U.S. Navy from 1960 to 1966 was not contaminated with asbestos.

8 I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct.

10 Executed July 7th, 2016, at Newbury, United Kingdom.

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John Hopkins, Declarant

PROOF OF SERVICE

Jesus and Francisca Payan v. CBS Corporation, et al.
LASC Case No. JCCP 4674; BC608412

I, the undersigned, declare: I am a citizen of the United States, over 18 years of age and not a party to the within action. I am employed in the County of Los Angeles, State of California; my business address is 633 West 5th Street, Suite 1700, Los Angeles, CA 90071.

On the date specified below, I served a copy of the foregoing document described as:

DECLARATION OF JOHN HOPKINS IN SUPPORT OF DEFENDANT JOHNSON & JOHNSON CONSUMER INC.'S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES

on the interested parties in this action

☒ by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as follows:

Laurel L. Simes, Esq.
Heather B. Osuna, Esq.
LEVIN SIMES LLP
44 Montgomery Street, 32nd Floor
San Francisco, CA 94104

Attorneys for Plaintiffs
JESUS PAYAN and FRANCISCA PAYAN

T: (415) 426-3000
F: (415) 426-3001

☐ BY MAIL: I am readily familiar with the business practice for the collection and processing of correspondence for mailing with the United States Postal Service and the fact that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business; on this date, the above-referenced correspondence was placed for deposit at Los Angeles, California, and placed for collection and mailing following ordinary business practices.

☒ BY ELECTRONIC SERVICE VIA FILE & SERVEXPRESS: File & ServeXpress for service on all counsel of record by electronic service pursuant to the Order Authorizing Electronic Service and pursuant to California Code of Civil Procedure § 1010.6 and California Rules of Court 2060(c). The transmission was reported as complete without error.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 11, 2016, at Los Angeles, California.


Brigitte S. Price

Exhibit 223

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF SAN FRANCISCO
3 ---oOo---
4 CONSUELO LOPEZ, et al., individually
5 and as Successor-in-Interest to
6 AUGUSTINE LOPEZ, Deceased; et al.,
7 Plaintiffs,
8 v. No. 434980
9 ACandS, INC., et al.,
10 Defendants.
11 _____/

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15 PLAINTIFF'S VIDEOTAPED DEPOSITION OF
16 ROGER MILLER
17 TUESDAY, JANUARY 16, 2007
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21 REPORTED BY: JOANNE BALBONI, CSR 10206
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<p>1 APPEARANCES</p> <p>2 (Continued):</p> <p>3 The Law Offices of Brydon, Hugo & Parker,</p> <p>4 135 Main Street, San Francisco, California,</p> <p>5 represented by ROBERO OCA, Attorney at Law, appeared</p> <p>6 as counsel on behalf of Foster Wheeler, LTD.</p> <p>7 The Law Offices of Berry & Berry, 1 Temple</p> <p>8 Street, San Francisco, California 94114, represented</p> <p>9 by GINA TRAVAGLIO, Attorney at Law, appeared on</p> <p>10 behalf of Thorpe Insulation.</p> <p>11 The Law Offices of Jackson & Wallace, 55</p> <p>12 Francisco Street, 6th Floor, San Francisco,</p> <p>13 California 94133, represented by ANA PORTILLO,</p> <p>14 Attorney at Law, appeared on behalf of H.M. Royal.</p> <p>15 The Law Offices of Sedgwick, Detert, Moran</p> <p>16 & Arnold, One Market Plaza, Steuart Tower, 8th Floor,</p> <p>17 San Francisco, California 94105, represented by SEAN</p> <p>18 PATTERSON, appeared on behalf of Soco-West, Inc.,</p> <p>19 Whittaker, Clark & Daniels.</p> <p>20 The Law Offices of Jedeikin, Spaulding,</p> <p>21 Meadows & Schneider, 333 Pine Street, San Francisco,</p> <p>22 California 94104, represented by LEOPOLDO CHANCO,</p> <p>23 Attorney at Law, appeared on behalf of Omya</p> <p>24 California, Inc., Mcneil (Ohio) Corporation.</p> <p>25</p> <p>Page 5</p>	<p>1 PROCEEDINGS</p> <p>2 MR. HAMES: I'm going to ask that the court</p> <p>3 reporter re-swear you in, and we'll just consider</p> <p>4 this another deposition, although Mr. Miller was just</p> <p>5 deposed 15 minutes ago. So are we on the record?</p> <p>6 THE VIDEOGRAPHER: Yeah, we are on the</p> <p>7 record.</p> <p>8 MR. HAMES: Okay.</p> <p>9 THE VIDEOGRAPHER: And we are back on the</p> <p>10 record. The time is 10:07 a.m.</p> <p>11 You may proceed.</p> <p>12 MR. HAMES: Okay. We are here to take the</p> <p>13 deposition of Roger Miller in the Consuelo Lopez case</p> <p>14 regarding the wrongful death of Mark Lopez, and this</p> <p>15 is San Francisco Superior Court case number 434980.</p> <p>16 My name is Scott Hames. I'm from the law</p> <p>17 firm of Keller, Fishback & Jackson, and I represent</p> <p>18 the plaintiffs in this case. And I'm going to ask</p> <p>19 that everyone just restate their appearances, please,</p> <p>20 even though Mr. Miller just gave a deposition on</p> <p>21 direct examination by his own attorney, and then I'm</p> <p>22 going to ask the court reporter to re-swear him. Go</p> <p>23 ahead.</p> <p>24 MR. CHANCO: My name is Leo Chanco, and I'm</p> <p>25 with the law firm of Jedeikin, Spaulding, Meadows &</p> <p>Page 7</p>
<p>1 APPEARANCES</p> <p>2 (Continued):</p> <p>3 The Law Offices of Imai, Tadlock, Keeney &</p> <p>4 Cordery, 100 Bush Street, Suite 1300, San Francisco,</p> <p>5 California 94104, represented by DANA LEAHY, Attorney</p> <p>6 at Law, appeared on behalf of Milwhite Inc., & CP</p> <p>7 Hall Company.</p> <p>8 The Law Offices of Thelen, Reid, Brown,</p> <p>9 Raysman & Steiner, 101 Second Street, Suite 1800, San</p> <p>10 Francisco, California 94105, represented by MIMI LEE,</p> <p>11 Attorney at Law, appeared on behalf of R.T.</p> <p>12 Vanderbilt & Company, Inc.</p> <p>13 The Law Offices of Thelen, Reid, Brown,</p> <p>14 Raysman & Steiner, 101 Second Street, 18th Floor, San</p> <p>15 Francisco, California 9494104-1211, represented by</p> <p>16 ROBERTA RENDAHL, Attorney at Law, appeared on behalf</p> <p>17 of Daimler Chrysler Corporation, appeared</p> <p>18 The Law Offices of Buty & Curliano, 383</p> <p>19 Fourth Street, Oakland, California 94607, represented</p> <p>20 by ADAM KOSS, Attorney at Law, appeared on behalf of</p> <p>21 Engelhard Corporation.</p> <p>22 Johnson & Johnson, 1 Johnson & Johnson</p> <p>23 Plaza, New Brunswick, New Jersey 08933, represented</p> <p>24 by JOHN O'SHAUGHNESSY, Attorney at Law, appeared on</p> <p>25 behalf of Johnson & Johnson.</p> <p>Page 6</p>	<p>1 Schneider. I represent McNeil Ohio Corporation and</p> <p>2 Omya California, Incorporated.</p> <p>3 MS. LEE: Mimi Lee for R.T. Vanderbilt</p> <p>4 Company from Thelen.</p> <p>5 MS. LEAHY: Dana Leahy. I am from the law</p> <p>6 firm of Imai, Tadlock, Keeney & Cordery for C.P. Hall</p> <p>7 Company and Milwhite, Inc.</p> <p>8 MR. OCA: Robero Oca from Brydon, Hugo &</p> <p>9 Parker on behalf of Foster Wheeler.</p> <p>10 MS. WILLIAMS: Tina Williams from Bassi,</p> <p>11 Martini, Edlin & Blum, representing JT Thorpe & Son</p> <p>12 and Parker Hannifin.</p> <p>13 MS. TRAVAGLIO: Gina Travaglio for Thorpe</p> <p>14 Insulation.</p> <p>15 MS. BRAUER: Anne Brauer for Goodyear Tire</p> <p>16 and Rubber Company.</p> <p>17 MS. PORTILLO: Ana Portillo for HM Royal.</p> <p>18 MS. FITZPATRICK: Jennifer Fitzpatrick from</p> <p>19 Armstrong & Associates on behalf of Elementis</p> <p>20 Chemicals, Inc.</p> <p>21 MR. MENO: Rudy Meno for Daimler Chrysler</p> <p>22 Corporation.</p> <p>23 MR. KOSS: Adam Koss from Buty & Curliano,</p> <p>24 and I represent Engelhard Corp.</p> <p>25 MR. PATTERSON: Sean Patterson from</p> <p>Page 8</p>

<p>1 Sedgwick, Detert, Moran & Arnold on behalf of 2 Soco-West Company and Whittaker, Clark & Daniels. 3 MS. WOODSON: And Rebecca Woodson here for 4 Luzenac. 5 MR. WILLIAMS: And I'm Gene Williams, 6 Mr. Miller's personal counsel. 7 MR. HAMES: Can you guys state your 8 appearances? 9 MR. PULLIAM: Tom Pulliam, Drinker, Biddle & 10 Reath. 11 MR. O'SHAUGHNESSY: John O'Shaughnessy, 12 attorney for Johnson & Johnson. 13 MR. HAMES: All right. Can you swear him 14 in, please? 15 (Whereupon the witness was sworn.) 16 EXAMINATION BY MR. HAMES 17 MR. HAMES: Q. Good morning, Mr. Miller. 18 Again, my name is Scott Hames, and I represent the 19 plaintiffs in this case. 20 You understand that the oath that you took 21 has the same force and effect as though you were in 22 court, right? 23 A. Yes. 24 Q. It comes with the penalty of perjury. 25 A. Yes.</p> <p style="text-align: right;">Page 9</p>	<p>1 A. No. 2 Q. Okay. Were you studying the mining of talc 3 in any way at that time? 4 A. No. 5 Q. Can you describe generally what you were 6 studying then at the University of Washington 7 pertaining to mining? 8 A. I was studying the methodology and the 9 technology of acquiring minerals from ores. 10 Q. Okay. What minerals? 11 A. In general, in the university level, it was 12 considering all minerals. We were exposed to a broad 13 range of techniques. 14 Q. Okay. And that's the only formal education 15 that you had -- 16 A. Yes. 17 Q. -- that's the last degree that you achieved, 18 right? 19 A. Right. 20 Q. Okay. Then what was your first job after 21 college? 22 A. The first job was as general manager of the 23 Border Lord Mining Company, reopening an abandoned 24 tungsten mine on the Canadian border. In the State 25 of Washington but on the Canadian border.</p> <p style="text-align: right;">Page 11</p>
<p>1 Q. And you just gave a deposition a few minutes 2 ago. I'm going to ask you a lot of questions. A lot 3 of them are going to be probably very redundant as to 4 what you already testified about, but I am entitled 5 to ask you those questions. Okay? So I apologize if 6 it seems somewhat redundant. 7 First of all, sir, how old are you? 8 A. I'm 81. 9 Q. What's your date of birth? 10 A. 8-30-25. 11 Q. All right. And I understand that you 12 attended the University of Washington in Seattle, 13 right? 14 A. Yes. 15 Q. Okay. And you graduated from that school, 16 right? 17 A. Yes. 18 Q. Okay. When did you graduate from the 19 University of Washington? 20 A. 1952. 21 Q. And what was your degree in? 22 A. Bachelor of science in mining engineering. 23 Q. Okay. Did your studies at the University of 24 Washington have anything to do with the mining of 25 asbestos in any way?</p> <p style="text-align: right;">Page 10</p>	<p>1 The mine had been originated by the Germans. 2 They had discovered the hardening effect of tungsten 3 in steel, and they were up there in 1913, 1914, 4 mining tungsten and shipping it back to Germany. We 5 were attempting to reopen this mine. 6 Q. What was the name of that company? 7 A. Border Lord Mining Company. They actually 8 mined doctors and dentists is what they did. 9 Q. I'm sorry. What did you say? They actually 10 what? 11 A. I shouldn't have said that. 12 They were mining doctors and lawyers. 13 That's where their funding was coming from. 14 Q. All right. How long did you work for that 15 company? 16 A. Seven and a half months, eight months. 17 Q. And what was your job title? 18 A. Probably general manager would -- 19 Q. What were your job duties? 20 A. I was responsible for the resurrection of an 21 abandoned mining camp and the initiation of the 22 mining operations. 23 Q. Okay. And at that time did you have any 24 involvement or become aware of any asbestos 25 contamination in that particular mine?</p> <p style="text-align: right;">Page 12</p>

1 **A. No.**
 2 Q. Okay. And then what was your next job?
 3 **A. The next job was with the WH Loomis Scott**
 4 **Company in Gouvernor, New York.**
 5 MS. BRAUER: Can I hear that back,
 6 Ms. Reporter?
 7 (Record read.)
 8 BY MR. HAMES: Q. When did you start
 9 working for them?
 10 **A. I believe in about 1953.**
 11 Q. For how long?
 12 **A. I worked for Loomis, and they were later**
 13 **acquired by International Talc Company. I was there**
 14 **for two and a half years. '54, maybe '55. I'm not**
 15 **sure of those dates.**
 16 Q. Okay. And were you working out of New York?
 17 **A. No, no. I was in Gouvernor, New York,**
 18 **upstate New York.**
 19 Q. What was your position with them?
 20 **A. I was mining engineer.**
 21 Q. All right. What were your job duties?
 22 **A. My job was to position and design the**
 23 **operations that were used to extract the ore.**
 24 Q. And this is for a talc company?
 25 **A. Yes.**

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1 Q. Where was the mine?
 2 **A. In Fowler, New York.**
 3 Q. Fowler?
 4 **A. Fowler, F-o-w-l-e-r.**
 5 **They actually had three ore bodies that they**
 6 **were mining.**
 7 Q. They had three ore bodies at that one
 8 particular mine?
 9 **A. M-hm. One company had three ore mines.**
 10 Q. Were they all in Fowler?
 11 **A. Yes. Or more proximate to Fowler.**
 12 Q. Okay. Where were the other locations?
 13 **A. I don't really remember the name of the**
 14 **villages. They were within seven miles of one**
 15 **another.**
 16 Q. Okay. What were your day-to-day duties?
 17 **A. I was responsible for the measurement of**
 18 **progress in the mine openings underground. I was**
 19 **responsible for sampling the ore faces so that the**
 20 **laboratory could determine the quality of the**
 21 **material. I was responsible for preparing all the**
 22 **maps and drawings of the geology and of the physical**
 23 **assets of the company.**
 24 Q. Did you ever learn that any of those ore
 25 bodies were contaminated with any form of asbestos

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1 when you were working there?
 2 **A. No.**
 3 Q. Okay. Were you aware if there was any
 4 concern about the mine or rather the ore bodies being
 5 contaminated with asbestos.
 6 MS. LEE: Objection; overbroad, vague, and
 7 ambiguous.
 8 BY MR. HAMES: Q. You can answer.
 9 **A. I was unaware of it.**
 10 Q. Okay. So that puts us in approximately 1956
 11 when you left that company?
 12 **A. '55, I think.**
 13 Q. Okay. And then where did you go after that?
 14 **A. I went to Buckman mines in Cloverdale,**
 15 **California, to operate a mercury mine and mill.**
 16 Q. I'm sorry. Where did you say that was?
 17 Cloverdale?
 18 **A. Near Cloverdale, California. Actually, it's**
 19 **7 miles up a very crooked road in Cloverdale,**
 20 **California.**
 21 Q. Near Clear Lake?
 22 **A. No. It was on this side of the mountain.**
 23 Q. And it was a mercury mine you said?
 24 **A. Yes.**
 25 Q. What were your job duties?

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1 **A. I was manager.**
 2 Q. Okay. How long did you work for Buckman
 3 Mines?
 4 **A. I worked for Buckman Mines and Buckman**
 5 **Laboratories for nine and a half years. I was in**
 6 **California for about two years, and then I was in**
 7 **Tennessee for seven, seven and a half. I believe,**
 8 **I'm not absolutely sure of this.**
 9 Q. Okay. What were your day-to-day duties
 10 during the first two years when you were in
 11 California for Buckman Mines?
 12 **A. I was responsible for the recovery of and**
 13 **the search for the ore-bearing zones and for the**
 14 **operation of the reduction plant.**
 15 Q. Okay. Where was the Buckman Mine located?
 16 **A. Do you know where the big geysers are?**
 17 Q. No. I'm sorry. I don't.
 18 **A. Well, it's halfway between Healdsburg and**
 19 **Cloverdale but back up in the Mayacamas mountain.**
 20 Q. Okay. And was --
 21 **A. There was a place up there where they**
 22 **generate electricity now, and we were very close to**
 23 **that.**
 24 Q. And was this just one mine that you were --
 25 **A. Yeah. Well, they had two properties that we**

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1 were running at the time.
 2 Q. Did you ever hear of either of those mines
 3 being contaminated with any form of asbestos?
 4 **A. No.**
 5 Q. So that puts us in about -- well, what was
 6 your next job?
 7 **A. Well, as I said, I went from the mining**
 8 **operation to the chemical operation in Memphis.**
 9 Q. Okay. And --
 10 **A. And from there, I went to the Eastern Mag**
 11 **job in Vermont.**
 12 Q. Okay. What were you doing in Tennessee for
 13 Buckman Mines or Buckman Laboratories?
 14 **A. Buckman Laboratories produced organic**
 15 **industrial products for the control of molds and**
 16 **slimes, dominantly in the paper industry, to keep the**
 17 **paper machines clean. So these were organic bromine,**
 18 **organic sulfur products, barium products, and I built**
 19 **plants for them and was responsible for the operation**
 20 **of the plants.**
 21 Q. Okay. That is so far over my head, I'm
 22 going to ask the court reporter to read that answer
 23 back. Okay?
 24 (Record read.)
 25 BY MR. HAMES: Q. Is there any way --

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1 MS. BRAUER: I'm sorry. Ms. Reporter,
 2 people are not hearing you down the room. I hate to
 3 ask you, but could you please repeat that again
 4 louder?
 5 (Record read.)
 6 BY MR. HAMES: Q. Did she get that right?
 7 **A. Yes.**
 8 Q. Is there any way for you to simplify that
 9 for a layman to understand what you were doing?
 10 That's a very --
 11 **A. Industrial microorganisms control chemicals.**
 12 **To summarize all this, all of the properties and what**
 13 **the intentions of the properties were.**
 14 Q. And it was for the paper industry?
 15 **A. Dominantly for the paper industry but in**
 16 **paint and other products.**
 17 Q. So the ultimate purpose is to prevent mold?
 18 **A. It's to kill molds and slimes.**
 19 Q. And what organic materials were being used?
 20 **A. Organic sulfur compounds, organic mercury**
 21 **compounds, organic bromine compounds, and barium**
 22 **compounds.**
 23 Q. I don't want to spend too much time on this,
 24 but was it actually in the paper or the paint itself,
 25 or was it on the machines that was generated?

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1 **A. It's in the fluid systems in which these**
 2 **paper products are produced.**
 3 Q. Okay.
 4 **A. There is a tendency for the slime and mold**
 5 **to plug the very fine mesh wires on which paper is**
 6 **made, and so these products eliminated that problem.**
 7 Q. And your role with respect to what they were
 8 doing was what exactly?
 9 **A. Building the plants and running the plants.**
 10 Q. Building the plants that actually --
 11 **A. Produced the material.**
 12 Q. Okay. And at any time did you come across
 13 the use of asbestos or any issues related to asbestos
 14 at all?
 15 **A. None.**
 16 Q. Okay. And you were in Tennessee for about
 17 seven years or so?
 18 **A. I think that's right.**
 19 Q. Okay. So what was your next job?
 20 **A. The next job was with Eastern Magnesia in**
 21 **Vermont.**
 22 Q. Okay. What year was that?
 23 **A. That was 1966.**
 24 Q. What was your job title?
 25 **A. Vice president of operations.**

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1 Q. And how long did you hold that position?
 2 **A. About two years. I'm not really very sure**
 3 **but about two years.**
 4 Q. Okay. Let's just talk about the first two
 5 years.
 6 What were your day-to-day duties when you
 7 were working for Eastern Mag as VP of operations?
 8 **A. I was responsible for the operation of the**
 9 **mines and mills, every aspect, including the**
 10 **prospecting for new ore bodies, including the**
 11 **construction and changes of the mills themselves. I**
 12 **had broad responsibilities in the operations.**
 13 Q. Okay. How many mines did Eastern -- I'll
 14 just call them Eastern, if that's all right -- have
 15 when you first started working there in 1966?
 16 **A. Two.**
 17 Q. Where were they?
 18 **A. One at Johnson Vermont, and one at**
 19 **Hammondsville.**
 20 Q. And that's Hammondsville, Vermont?
 21 **A. Yes.**
 22 Q. And how many mills did they have?
 23 **A. They had three. They had one in Johnson**
 24 **Vermont, and one in West Windsor, Vermont, and one at**
 25 **Gassetts, Vermont.**

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1 Q. How do you spell that?
 2 **A. G-a-s-s-e-t-t-s.**
 3 Q. Okay. And --
 4 THE WITNESS: Can you folks hear me all
 5 right?
 6 MR. WILLIAMS: Believe me, they are not shy.
 7 They'll speak up if they can't.
 8 BY MR. HAMES: Q. Did you know how long
 9 Eastern Magnesia had been in business before you
 10 started working for them?
 11 **A. Before I started working for them, no.**
 12 Q. Do you know if they were a subsidiary of any
 13 other companies?
 14 **A. When I came to work for Eastern Magnesia,**
 15 **they were a wholly owned subsidiary of Johnson &**
 16 **Johnson.**
 17 Q. Okay. Do you know if Johnson & Johnson at
 18 that time had any mines that they were operating?
 19 **A. They did not.**
 20 Q. Okay. How do you know that?
 21 **A. Well, because my presence was very**
 22 **distinctive within the J & J organization.**
 23 Q. Okay. What do you mean by "very
 24 distinctive"?
 25 **A. There wasn't anybody else doing what I was**

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1 **doing.**
 2 Q. Okay. So you were the only person that
 3 really had any information related to the mine
 4 operations?
 5 **A. Well, I was their source of information for**
 6 **the mining operation.**
 7 Q. Okay. So when did the Johnson Vermont mine
 8 first come online?
 9 **A. Oh, boy. The Johnson Vermont mine was**
 10 **probably 80 years old by the time I got there. So**
 11 **it would have been 80 years before 1966.**
 12 Q. Okay. What about the Hammondsville mine?
 13 How long had it been around or been in use?
 14 **A. Since about 1941.**
 15 Q. All right.
 16 **A. And there were very different scale and**
 17 **scopes of these operations over time.**
 18 Q. Okay. Let's take them individually.
 19 The Johnson Vermont mine, do you know what
 20 they were mining there before --
 21 **A. They were mining --**
 22 Q. Wait. Hold on. Let me just finish just so
 23 the record is clear.
 24 They were mining there before you started
 25 working for Eastern?

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1 **A. M-hm.**
 2 Q. What were they mining?
 3 **A. Talc ore.**
 4 Q. Okay. Had they ever mined anything other
 5 than talc ore from that mine that you are aware of?
 6 **A. No.**
 7 Q. All right. The same question with respect
 8 to Hammondsville. What were they mining there?
 9 **A. Talc ore.**
 10 Q. Did they ever mine anything else?
 11 **A. No.**
 12 Q. What was your next position with Eastern
 13 after the first two years when you were VP of
 14 operations?
 15 **A. I became president of Windsor Minerals. By**
 16 **that time, the name Eastern Mag had been eliminated.**
 17 **The northern properties had been sold, and I was**
 18 **president of the new company Windsor Minerals.**
 19 Q. And so that was 1968, right?
 20 **A. I believe that's --**
 21 Q. Or thereabouts?
 22 **A. Or thereabouts is a better way to say it.**
 23 Q. Okay. It's okay for you to give me an
 24 estimate as long as you are not guessing about
 25 something. Okay? If you are guessing or you are

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1 purely speculating --
 2 **A. What if I'm fumbling?**
 3 Q. Fumbling is okay. That's allowed. You can
 4 give me an estimate, though. Okay?
 5 **A. All right.**
 6 Q. All right. So in approximately 1968, you
 7 were president, and the company name had changed to
 8 Windsor Minerals?
 9 **A. Yes.**
 10 Q. Do you know when that name change took
 11 place?
 12 **A. It took place coincident with the sale of**
 13 **the Johnson mine and mill, Engelhard Minerals and**
 14 **Chemicals, which took place in 1968.**
 15 Q. Okay. And it was sold to whom?
 16 **A. Engelhard Minerals & Chemicals.**
 17 Q. How do you spell that? The Engelhard part?
 18 **A. Somebody here, I think, has a closer**
 19 **association, and I don't --**
 20 MR. WILLIAMS: If you know, tell him. If
 21 you don't --
 22 THE WITNESS: I don't know.
 23 MR. HAMES: Okay.
 24 MR. WILLIAMS: It's not a spelling test.
 25 MR. HAMES: No, it's not.

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1 Q. Nonetheless, the Johnson Vermont mine in
 2 approximately 1968 was sold to this other company
 3 Engelhard?
 4 **A. Yes.**
 5 Q. And --
 6 **A. And the name Eastern Magnesia was sold with**
 7 **it.**
 8 Q. With it. All right.
 9 And then your position changes as well, and
 10 you became the president?
 11 **A. Yes.**
 12 Q. But you became the president of Windsor
 13 Minerals?
 14 **A. Yes.**
 15 Q. Okay. Was there any relationship with
 16 Windsor Minerals with Eastern Magnesia?
 17 **A. Eastern Magnesia was the company that J & J**
 18 **acquired. Okay?**
 19 Q. Uh-huh.
 20 **A. The acquired company was sold. The northern**
 21 **half of the acquired company was sold, and the name**
 22 **Eastern Magnesia was sold with it, and a new**
 23 **corporation was formed, a wholly owned subsidiary of**
 24 **Johnson & Johnson, named Windsor Minerals.**
 25 Q. Okay. So as far as you were aware, Windsor

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1 Minerals never existed before 1968?
 2 **A. It did not.**
 3 Q. Okay. And they were a wholly owned
 4 subsidiary of Johnson & Johnson?
 5 **A. Yes.**
 6 Q. And they were newly formed in 1968 after
 7 Eastern Mag was sold to Engelhard along with the
 8 name?
 9 **A. Yes.**
 10 Q. Okay. I got it.
 11 And then did Windsor Minerals have any
 12 connection or any duties at all with the Johnson
 13 Vermont mine after 1968?
 14 **A. No.**
 15 Q. Okay. So you only had dealings with the
 16 Johnson Vermont mine from 1966 to 1968?
 17 **A. Yes.**
 18 Q. Okay. Did Windsor Minerals continue to
 19 operate the Hammondsville mine?
 20 **A. Yes.**
 21 Q. And how long did they continue to do that?
 22 **A. As long as I worked there.**
 23 Q. Okay. And how long was that?
 24 **A. Until 1989.**
 25 Q. Okay. And so you were the president of

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1 Windsor Minerals from 1968 until 1989; is that
 2 correct?
 3 **A. Yes.**
 4 Q. Okay. And as president, after 1968, what
 5 was your involvement with the Hammondsville mine, if
 6 any?
 7 **A. I was directly responsible for the conduct**
 8 **of mining operations at the Hammondsville mine. I**
 9 **had a mine superintendent who reported to me, but it**
 10 **was my responsibility to oversee and supervise the**
 11 **development of that property.**
 12 Q. Before we leave the Johnson Vermont mine,
 13 for those two years when you were still working for
 14 Eastern Mag and had dealings with that mine, they
 15 were only mining talc from that mine, correct? Is
 16 that what --
 17 **A. Yes.**
 18 Q. -- you said?
 19 Do you know what that talc was used for?
 20 **A. It was used in the paper industry. It was**
 21 **used in the paint industry. It was used in the auto**
 22 **body putty industry, and a whole range of minor uses.**
 23 Q. What other minor uses that you recall?
 24 **A. They had a very small scale production of a**
 25 **cosmetic -- not a high-grade cosmetic but a low grade**

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1 **cosmetic product which was sold to cosmetic uses and**
 2 **also to the paint and varnish industry. They also**
 3 **sold to the rubber industry.**
 4 Q. Do you know who they sold to in the rubber
 5 industry?
 6 **A. No.**
 7 Q. Let me just make sure the record is clear on
 8 that.
 9 You don't know who Eastern Mag's essentially
 10 their clients or customers were who were purchasing
 11 the talc from the Johnson mine and the rubber
 12 industry, correct?
 13 **A. I knew generally they were selling to the**
 14 **rubber industry. I didn't know specifically who they**
 15 **were selling to.**
 16 Q. Okay. And do you know how much they sold to
 17 the rubber industry at that time? How much talc?
 18 **A. I do not know.**
 19 Q. Do you know if at the Johnson Vermont mine
 20 anything was ever done to determine if that mine was
 21 contaminated with asbestos of any form?
 22 **A. I don't.**
 23 MS. WOODSON: Objection; vague and ambiguous
 24 as to "anything done."
 25 MR. WILLIAMS: You can go ahead and answer.

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1 THE WITNESS: I don't know.
 2 BY MR. HAMES: Q. Was there any testing of
 3 any kind that you are aware of?
 4 **A. There was testing done in order to ascertain**
 5 **whether or not the products met the quality**
 6 **standards, the customer's quality standards, for the**
 7 **individual products, because the products would be**
 8 **used in many different applications, and so our test,**
 9 **our physical tests in the mill, met the quality**
 10 **standards of the customer.**
 11 Q. Okay. And let me ask you this: All the
 12 talc that came from that mine, was it essentially the
 13 same, or were there different batches, different
 14 quantities, different mixtures, that sort of thing?
 15 MR. WILLIAMS: And you are asking just about
 16 the Johnson mine?
 17 MR. HAMES: Yeah. Just about the Johnson
 18 mine and from 1966 to '68.
 19 THE WITNESS: There was some variation in
 20 quality within the ore body, and one of the aspects
 21 of mining was to come up with a uniform blend because
 22 the mill wasn't adjustable to any significant degree.
 23 And so they took the composite of the ore body and
 24 then attempted to operate enough headings in the
 25 mines so that they have a relatively uniform -- not

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1 an absolute uniform but a relatively uniform feed to
 2 the mill.
 3 BY MR. HAMES: Q. What other minerals, if
 4 any, were in the talc from the Johnson's mine from
 5 '66 to '68 that you are aware of?
 6 **A. The most common mineral in association with**
 7 **the talc was magnesite, magnesium carbonate. It was**
 8 **actually a calcium magnesium carbonate.**
 9 Q. A calcium magnesium carbonate --
 10 **A. Right.**
 11 Q. -- and talc?
 12 **A. And talc.**
 13 Q. Was there anything else that you are aware
 14 of, any other minerals?
 15 **A. There were minor dark-colored minerals,**
 16 **which they tried forever and ever to avoid because**
 17 **most of the talc products required a color standard,**
 18 **a whiteness standard. And there were the streaks of**
 19 **a dark color mica that would come through, and it**
 20 **would change the color of the massive talc.**
 21 Q. I'm sorry. What was that mineral?
 22 **A. Mica.**
 23 Q. Okay. Were you aware of any other
 24 minerals --
 25 **A. No.**

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1 Q. -- that you haven't already mentioned?
 2 **A. No.**
 3 Q. Okay. So there was testing that was done
 4 for the end product of the talc, right?
 5 **A. That's right.**
 6 Q. What about at the mine itself to see if
 7 there was any asbestos present at the mine.
 8 **A. The testing of the mine -- the head of the**
 9 **mine consisted of the same diamond drill pattern. In**
 10 **order to determine the location of the ore bodies,**
 11 **the quantities of the ore, we used diamond drills.**
 12 **And the core from those diamond drills were always**
 13 **evaluated in the laboratory to be sure they met the**
 14 **criteria that we needed to feed the mills. I have no**
 15 **knowledge or recollection of any specific testing for**
 16 **asbestos in the period of time that I was there.**
 17 Q. Okay. And we are just talking about the
 18 Johnson mine --
 19 **A. Yes.**
 20 Q. -- from '66 to '68.
 21 **A. I'm talking about the Johnson mine.**
 22 Q. And you talked about the diamond drilling a
 23 little bit earlier --
 24 **A. M-hm.**
 25 Q. -- but I want you to describe in detail

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1 exactly what that is.
 2 **A. A diamond bit is a circular surface**
 3 **impregnated with diamond particles on a hollow pipe,**
 4 **a hollow stem. It is forced against rock, cooled by**
 5 **water. And as a result of this, you end up with a**
 6 **three- or four-foot-long piece of rock that's an inch**
 7 **and a quarter in diameter. It's a very**
 8 **representative sample of the material that it has**
 9 **just passed through, and we used those to assess the**
 10 **quality of the ore.**
 11 Q. For the Johnson mine, how frequently was
 12 this diamond drilling done where the core samples
 13 were taken during that two-year period?
 14 **A. I really can't say. I know that we had**
 15 **them, that we used them. The frequency, I do not**
 16 **recall.**
 17 Q. Okay. How big was that mine?
 18 **A. How big was the mine? About 140,000 tons a**
 19 **year.**
 20 Q. That's what it produced --
 21 **A. M-hm.**
 22 Q. -- for talc?
 23 **A. Of the ore.**
 24 Q. Of the ore?
 25 **A. Yes.**

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1 Q. Okay. And then the ore is sent off to the
2 processing plants?
3 **A. Yes.**
4 Q. Okay. Is there any way for you to tell me
5 how frequently the diamond drilling was done? You
6 said that you don't really know, but was it done
7 annually or every month?
8 **A. It was done by the operating staff, drilling**
9 **holes ahead of the opening. You are driving an**
10 **opening through the ore. You want to know the**
11 **quality of the ore ahead of you. They would bring in**
12 **a diamond drill and drill a pilot hole ahead for 60**
13 **or 80 feet to assess the quality. That was a uniform**
14 **practice that went on all the time. If they were in**
15 **search for an extension of the ore body or a**
16 **different dimension of the ore body, then they would**
17 **set up and drill a whole pattern of holes.**
18 Q. Okay. And once they found from the core
19 sample the talc that they were looking for, how was
20 the talc then mined?
21 **A. Drill and blast.**
22 Q. Okay. All right. And I think you mentioned
23 this, but I want to make sure the record is clear.
24 You are not aware of any testing being done
25 of those core samples for asbestos in the Johnson

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1 mine --
2 **A. No.**
3 Q. -- from 1966 to '68?
4 **A. No, I'm not aware.**
5 Q. Okay. Since you have so much experience in
6 this area, what do you think they would have done had
7 they come across asbestos?
8 MS. WOODSON: Objection; calls for
9 speculation and irrelevant.
10 THE WITNESS: I have no idea what the
11 response would be.
12 BY MR. HAMES: Q. If they found asbestos in
13 a core sample, would that be of such a nature that it
14 would contaminate the ore body that you wouldn't
15 drill there, or you wouldn't mine there?
16 MS. WOODSON: Objection; calls for
17 speculation --
18 MS. BRAUER: Objection; irrelevant.
19 MS. WOODSON: -- and irrelevant.
20 THE WITNESS: I have no idea what the
21 reaction would have been.
22 MR. HAMES: Okay.
23 THE WITNESS: They had been in those ore
24 bodies for a long, long time.
25 BY MR. HAMES: Q. Right. For 80 years

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1 before you were there?
2 **A. Yes.**
3 Q. Okay. Do you know the names of any of the
4 companies that were customers that purchased the
5 actual talc in any of those different industries from
6 that --
7 MR. WILLIAMS: Again, the Johnson mine?
8 BY MR. HAMES: Q. -- from that Johnson mine
9 from '66 to '68?
10 **A. I would be guessing.**
11 Q. Okay. And why is that? Because you just --
12 **A. Because I didn't have a relationship with**
13 **the sales. My responsibilities were the operation of**
14 **the mines and mills.**
15 Q. Okay. Are you aware of any documents or any
16 records that might reflect that?
17 **A. No.**
18 Q. Okay. Are you aware of any documents at all
19 relating to that mine and the samples that were taken
20 of the diamond drilling?
21 **A. I'm not. There have been two acquisitions**
22 **since I had anything to do with it. I only had to do**
23 **it for two years, and it's 25 years ago.**
24 Q. Right.
25 **A. I have no information. No recollection at**

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1 **all.**
2 Q. Okay. Were you aware of any allegations of
3 anyone ever being exposed to asbestos while they were
4 working at that mine?
5 **A. No.**
6 Q. And just to be clear about that, you are not
7 aware of any workers ever filing any workers'
8 compensation claims for asbestos exposure from that
9 mine?
10 **A. No.**
11 Q. Is that right?
12 **A. Yes, that's right.**
13 Q. Okay. Are you aware of any individuals that
14 might know who the customers were that were
15 purchasing the talc from that mine? Former
16 employees, managers, the people in the distribution
17 department, something like that? Anyone?
18 **A. I don't believe so. I think I'm the**
19 **survivor of that whole --**
20 Q. Well, whether or not you are aware if they
21 are alive or not --
22 **A. I don't know.**
23 Q. Okay. You are not aware of the names of
24 anyone that worked there that might have known who
25 the customers were who purchased the talc from that

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1 Johnson mine?
 2 MS. WOODSON: Asked and answered.
 3 THE WITNESS: I don't know.
 4 BY MR. HAMES: Q. Can you give me the names
 5 of any of your former co-workers? Can you name one
 6 that was working for the same company as you were
 7 during that time period, from '66 to '68?
 8 **A. A live one you mean?**
 9 Q. No. Any of them at all because they may
 10 have given a deposition or something similar to what
 11 you are doing that we might be able to look at.
 12 **A. I really don't know. I was young when I**
 13 **went there, and everybody else was old. So --**
 14 Q. Okay. I'm talking about anyone that was
 15 employed by that company, meaning people that were
 16 down in the mines themselves or management or --
 17 **A. No, I don't recall.**
 18 Q. -- anyone. Okay.
 19 Whether or not they are gone or not, you
 20 don't recall anyone's name?
 21 **A. No. That's a long time ago.**
 22 Q. Okay. I just want to make sure we are
 23 through with that.
 24 **A. Yes.**
 25 Q. I'm not trying to beat you up about it. I

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1 realize it was a long time ago. All right. Do you
 2 know how -- well, let's talk about this.
 3 Once the talc was mined from the Johnson
 4 mine, it went to different processing plants,
 5 correct?
 6 **A. No.**
 7 Q. It went to one?
 8 **A. It went to the Johnson mill.**
 9 Q. Okay. And that was also located in Johnson
 10 Vermont?
 11 **A. Yes.**
 12 Q. How was it transported over there?
 13 **A. A truck, an eleven-hundred-ton truck.**
 14 Q. How much talc was being produced from that
 15 mine?
 16 **A. About 160, 180 -- I'm not too sure of that**
 17 **number, but I think it's around 160,000 tons a year.**
 18 Q. 160,000 tons a year. Okay.
 19 So it's trucked over to the processing mill?
 20 **A. Yes.**
 21 Q. And can you just generally describe what the
 22 processing mill did with the talc?
 23 **A. The ore coming from the mine, generally**
 24 **speaking, was less than 24 inch by 24 inch chunks.**
 25 **These chunks were passed through a crusher, a primary**

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1 crusher, and through a secondary crusher and produced
 2 material about three-quarters of an inch in diameter.
 3 This material, depending on where it was
 4 going and what it was going to be used for, it was
 5 ground in a device called a Raymond mill. And it
 6 could be ground to 95 percent, minus 325 measure, or
 7 it could be ground to 40 percent, minus 325 measure.
 8 But it was around 40 microns where most of the
 9 utility of the product was available to the
 10 customers. And so that was a process.
 11 In the Johnson mill, there was what we
 12 called the dry mill, which it just simply took the
 13 whole ore, grounded it up, and shipped it to
 14 customers. But there also was the wet mill in which
 15 the flotation process was applied and the refined
 16 product resulted, and that refined product drew a
 17 premium of income to the company from the paint
 18 industry and from the cosmetic industry. So there
 19 were some special uses.
 20 Q. For the cosmetic industry?
 21 **A. Well, the cosmetic industry, but also for**
 22 **some industrial applications.**
 23 Q. Okay. So essentially what you have, I think
 24 it's -- just to summarize what you said.
 25 You have a 24 by 24 inch --

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1 **A. Block.**
 2 Q. -- block of --
 3 **A. Of stone.**
 4 Q. -- of stone that has the talc inside it, and
 5 it's pulverized or crushed, right?
 6 **A. Right.**
 7 Q. And it's crushed to different varying
 8 degrees?
 9 **A. Yes.**
 10 Q. Okay. And the stone -- the other minerals
 11 are removed from the talc?
 12 **A. In the wet mill.**
 13 Q. In the wet mill?
 14 **A. But not in the dry mill. The dry mill is**
 15 **whole ore.**
 16 Q. Okay. So what does the dry product consist
 17 of then?
 18 **A. It consists of the minerals in the ore**
 19 **itself. The carbonate mineral and the talc mineral.**
 20 Q. Anything else?
 21 **A. Traces of biotite mica occasionally.**
 22 Q. I'm sorry. Traces of what?
 23 **A. Of mica --**
 24 Q. Okay.
 25 **A. -- occasionally.**

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1 Q. Anything else that you are aware of?
 2 **A. No. And I do not have a recollection of the**
 3 **minor minerals that might have been present. I don't**
 4 **have a good recollection of that at all.**
 5 Q. And you are saying minor, m-i-n-o-r, right?
 6 **A. Yes.**
 7 Q. So what would you consider to be a minor
 8 mineral?
 9 **A. Biotite mica.**
 10 Q. Okay.
 11 **A. Just a little bit of silica. Those are**
 12 **really the only two that come to my mind.**
 13 Q. Could asbestos have been one of those minor
 14 minerals?
 15 **A. It might have been. I have no way of**
 16 **knowing.**
 17 Q. Okay. The reason why you don't know is
 18 because it wasn't tested; is that right?
 19 **A. Yes.**
 20 Q. As far as you are aware?
 21 **A. Right.**
 22 Q. Okay. All right. And that's the dry
 23 milling process, right?
 24 **A. Right.**
 25 Q. Okay. And then you also described a wet

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1 process?
 2 **A. Right.**
 3 Q. Can you describe that in a little more
 4 detail for me, please?
 5 **A. The ground talc ore is mixed with water and**
 6 **with some surfactants. Air is blown through it, and**
 7 **the talc floats. The talc is hydrophobic. It hates**
 8 **water.**
 9 **Take baby powder and sprinkle it in the**
 10 **bathtub, and it floats. So that characteristic of**
 11 **talc is used to separate talc from nontalc in a**
 12 **flotation process. All the nontalc particles sink.**
 13 **The talc particles float so that the wet mill product**
 14 **was enriched in talc. It wasn't pure talc, but it**
 15 **was enriched in talc.**
 16 Q. Okay. Now, with the dry process, do you
 17 know how pure the talc was?
 18 **A. Do I know how pure it was? I know that the**
 19 **ore typically was about 58 percent talc.**
 20 Q. Okay. So it's 58 percent talc --
 21 **A. Don't quote me.**
 22 Q. -- and the rest is other minerals?
 23 **A. Other minerals. Basically, the carbonate,**
 24 **the magnesium carbonate.**
 25 Q. Okay. That's the vast majority --

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1 **A. Yes.**
 2 Q. -- as far as you are aware?
 3 **A. Yes.**
 4 Q. Okay. And then there is the other minor
 5 minerals which may or may not have included asbestos
 6 as far as you are aware?
 7 **A. Yeah. As far as I'm aware, right.**
 8 Q. What percentage of the remaining minerals
 9 would you consider that to be, the minor minerals?
 10 **A. A quarter of one percent.**
 11 Q. Okay. A quarter of one percent --
 12 **A. Yes.**
 13 Q. -- or a quarter to one percent?
 14 **A. No. I think a quarter of one percent. It's**
 15 **a very minor thing.**
 16 Q. Okay.
 17 **A. I explained to you that they avoided the**
 18 **dark micas because of the color effect.**
 19 Q. All right. And then with the wet process,
 20 do you know what percentage of talc was remaining?
 21 **A. I believe those products were about 92**
 22 **percent talc.**
 23 Q. And what's the remaining minerals, if you
 24 know?
 25 **A. Residual carbonate.**

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1 Q. Okay. Could asbestos have been one of those
 2 minerals?
 3 **A. It could have been. I was never aware ever**
 4 **that there was any.**
 5 Q. All right. And were there any other
 6 processing plants other than the Johnson one during
 7 this time period?
 8 MR. WILLIAMS: For the Johnson mine?
 9 MR. HAMES: Yes, for the Johnson mine.
 10 THE WITNESS: No.
 11 BY MR. HAMES: Q. And you mentioned the
 12 different industries where the talc was sold from the
 13 Johnson Vermont mine --
 14 **A. M-hm.**
 15 Q. -- and just to be clear, you don't know who
 16 any of the customers were, right?
 17 **A. No, I do not.**
 18 MS. WOODSON: Objection; asked and answered.
 19 BY MR. HAMES: Q. Can you describe
 20 generally -- you went through a couple of them --
 21 which industries wanted the fine talc versus the dry
 22 talc?
 23 **A. Well, the paint industry used the refined**
 24 **product to some degree, and the toiletry industry**
 25 **used it to some degree, the paper industry used it as**

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1 a paper coating material to some degree. I'm not
 2 well versed in that.
 3 Q. Okay. And then who were the customers for
 4 the dry? What different industries?
 5 A. Probably the auto body putty, tape compound,
 6 joint cement. At one time some of the roofing.
 7 Basically, that was it.
 8 Q. Is that it? Are you aware of any others?
 9 A. Well, as I told you, the rubber industry
 10 took some, but I don't know who they were, or how
 11 much they took.
 12 Q. Right. Okay. And so these different
 13 industries were essentially getting the same
 14 material, the same percentage of talc, the same
 15 quality?
 16 A. The same quality but a different particle
 17 size distribution --
 18 Q. Okay.
 19 A. -- because people had different criteria of
 20 coarseness or fineness that they required.
 21 Q. Okay. And that's what you were describing
 22 with the mesh?
 23 A. Yes.
 24 Q. And the diameter I think you said, or was
 25 that the thickness of the end product? Why don't you

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1 put it in your words. If you can, describe what the
 2 different qualities were.
 3 MS. WOODSON: Objection; vague and
 4 ambiguous.
 5 THE WITNESS: If you were to prepare a
 6 product for the paint industry, because paint is
 7 composed of very, very fine particulate material,
 8 they want you, the supplier, to grind it as far as
 9 you can so that they don't have to grind it up when
 10 they get it. So paint requires the finest particle
 11 size that is possible.
 12 The joint smith, the body putty guys, and
 13 the automobile industry, they don't want it fine.
 14 They want it with few fines, if they can, because
 15 their properties are balanced with plastic in them
 16 and the talc are balanced to do a particular function
 17 when you apply it. So there is a great range of
 18 particle size distributions that are used to control
 19 the product.
 20 BY MR. HAMES: Q. Do you know what particle
 21 sizes were distributed to the rubber industry?
 22 A. I have no idea.
 23 Q. Okay. Do you know what size -- they didn't
 24 want the fine, right? They weren't using the wet,
 25 well refined --

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1 A. I have no idea.
 2 Q. Okay. Do you know what the talc was used
 3 for by the rubber industry at that time?
 4 A. I believe -- and this is hearsay. It's not
 5 from my personal knowledge, but I have been told that
 6 it was used as a the parting agent. If you had two
 7 slabs of rubber and you didn't want it to slip, stick
 8 together, you dust this surface with talc and then
 9 put this one on top of it.
 10 Q. Okay.
 11 A. That's the entire limit of my knowledge of
 12 the rubber industry.
 13 Q. Okay. Just one last question on the Johnson
 14 mine: Do you know if the Goodyear Tire and Rubber
 15 Company ever used any of the talc from that mine?
 16 A. I don't know.
 17 MS. BRAUER: Objection. It calls for
 18 speculation, vague, and overbroad.
 19 BY MR. HAMES: Q. The reason I ask you
 20 that -- and I don't know how much information you
 21 have -- my client worked at this Goodyear Tire and
 22 Rubber Company and factory. And that reminds me of
 23 something.
 24 Other than your attorney, have you spoken to
 25 anyone about your deposition today?

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1 A. My wife.
 2 Q. Okay.
 3 A. She told me not to swear.
 4 Q. Well, unfortunately, we did swear you in.
 5 Okay.
 6 But you didn't talk to anyone else?
 7 A. No.
 8 Q. Did you review any documents other than what
 9 your attorney produced?
 10 A. I've looked carefully through this.
 11 Q. Is that it? Did you look at anything else?
 12 A. I've looked at other documents, but they
 13 were not in my possession.
 14 Q. Okay. What other documents did you look at?
 15 A. Kind of a residual history of the time lines
 16 so that I could come here and be able to say this
 17 happened there and this happened then.
 18 Q. When did you review that document?
 19 A. Three months ago.
 20 Q. All right. And do you still have it?
 21 A. No. I never did have it.
 22 Q. Who had it?
 23 A. I went to his office.
 24 Q. Your attorney?
 25 A. The attorney, yes.

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1 Q. Okay.
 2 **A. He had some information that was useful to**
 3 **me.**
 4 Q. Okay. And it was the time line of what
 5 exactly?
 6 **A. The sequence of events. When did this**
 7 **happen, when did that happen, when did Eastern Mag**
 8 **become Windsor Minerals. You know, when did I arrive**
 9 **on the scene.**
 10 Q. All right. And was this something that your
 11 attorney had prepared or that you prepared?
 12 **A. No. These were documents that were in his**
 13 **possession. I have no idea who prepared them.**
 14 Q. Okay. All right. I don't want to get into
 15 anything that might be attorney-client privilege
 16 about your discussions with your attorney, but was it
 17 something that you wrote yourself, or was it
 18 something that your attorney wrote?
 19 **A. Some of the documents were documents that I**
 20 **had prepared.**
 21 Q. Okay. Which documents are the ones that you
 22 had prepared?
 23 **A. Oh, maybe a letter to McCrone or a response**
 24 **to McCrone. A series of documents that had to do**
 25 **with the controversy that we had with NIOSH at one**

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1 **point in time. I really cannot think of other**
 2 **specifics. It was a general review of the history --**
 3 Q. Okay.
 4 **A. -- is what it was.**
 5 Q. The letters that you are referring to with
 6 McCrone -- we are going to get to that later -- those
 7 aren't the letters that were produced here today,
 8 right?
 9 **A. Well, one of them was.**
 10 Q. One of them was, but there is another one
 11 that's not here?
 12 **A. Well, there may be others. I don't know.**
 13 Q. Okay.
 14 **A. I may have seen others.**
 15 Q. Okay. And then you mentioned something
 16 about a dispute with NIOSH?
 17 **A. Yes.**
 18 Q. Can you describe that?
 19 **A. It was at a controversy that came in the**
 20 **'70s based on a study done by graduate students out**
 21 **of Ohio that alleged health problems from working in**
 22 **the talc mines. It was a failed paper as far as I**
 23 **was concerned.**
 24 Q. Graduate students from where?
 25 **A. I don't know. They were out of Columbus,**

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1 **Ohio.**
 2 Q. Okay. And what were the documents that your
 3 attorney had relating to the NIOSH dispute?
 4 **A. I think it was, again, the time line of when**
 5 **it occurred and how it occurred.**
 6 Q. Okay. Was it the results of the study
 7 itself?
 8 **A. None of this had anything -- excuse me.**
 9 **Was it as a result of the study itself?**
 10 Q. Yes.
 11 **A. Yes.**
 12 Q. And which mine was that concerning?
 13 **A. It was basically the Johnson mine.**
 14 Q. Was there any other mine other than Johnson
 15 mine?
 16 **A. They had looked at three different mining**
 17 **companies in Vermont.**
 18 Q. Okay. Which companies?
 19 **A. They had looked at Johnson. At Eastern Mag,**
 20 **they looked at Vermont Talc Company, and there was a**
 21 **third company whose name I'm not going to be able to**
 22 **recall, a very small company.**
 23 Q. Okay. And so you had the time line of the
 24 events that happened regarding that dispute?
 25 **A. Regarding our reaction and response to the**

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1 **allegations of the paper.**
 2 Q. Okay. What were the allegations of the
 3 paper pertaining to the Johnson Vermont mine?
 4 **A. The allegations were that they believed that**
 5 **they had found a cause of death relative to the**
 6 **employment in the mines. They were never able to**
 7 **demonstrate what the cause of death was, and we**
 8 **challenged it. We challenged it very forcibly. We**
 9 **hired people to look at it and had long discussions**
 10 **with NIOSH about the quality of the work that had**
 11 **been presented.**
 12 Q. Okay. Just generally, what sort of deaths
 13 are we talking about? Was it from disease? Was it
 14 mining accidents? What was it?
 15 **A. They were never able to determine. They**
 16 **were looking for a medical effect from talc**
 17 **exposures. I think the concluding remark was that**
 18 **maybe it was caused by radiation in the water in the**
 19 **mines.**
 20 Q. So was it looking at whether or not cancer
 21 was what was being caused?
 22 **A. They were simply looking at cause of death.**
 23 **I don't know what they were looking for.**
 24 MR. HAMES: The videotape is going to run
 25 out. We've been going a little while. So why don't

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1 we take about a ten-minute break. Okay? Let's go
 2 off the record then.
 3 THE VIDEOGRAPHER: This is the end of tape
 4 one, Volume I, for the deposition of Roger Miller.
 5 Going off the record. The time is 11:01 a.m.
 6 (Recess.)
 7 THE VIDEOGRAPHER: This is the start of tape
 8 two, Volume I, for the deposition of Roger Miller.
 9 We are back on the record. The time is 11:16 a.m.
 10 You may proceed.
 11 BY MR. HAMES: Q. All right. Mr. Miller,
 12 we were talking about this NIOSH dispute before we
 13 broke, and I just want to ask you a little bit about
 14 that.
 15 Do you know if there were any allegations
 16 whatsoever of anyone being exposed to asbestos in
 17 that graduate student study?
 18 **A. I really told you just about all I know**
 19 **about that particular thing. The details of it, I do**
 20 **not have in mind.**
 21 Q. So you don't know one way or the other if
 22 asbestos was an issue?
 23 **A. No.**
 24 Q. Okay. You mentioned that there might have
 25 been some exposure to radiation in the water?

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1 **A. That was one of the things that were**
 2 **reported, yeah.**
 3 Q. Okay. Well, what was the position of your
 4 company in relation to that study?
 5 **A. Because we were operating the properties in**
 6 **Southern Vermont and some of the people from Southern**
 7 **Vermont were included in the study, so we were a**
 8 **participant in that. Our crew was part of that.**
 9 Q. And when you are talking about Southern
 10 Vermont, are you talking about the Johnson mine?
 11 **A. No.**
 12 Q. What are you talking about then?
 13 **A. Hammondsville.**
 14 Q. Hammondsville.
 15 So that was another mine that the graduate
 16 students had looked at?
 17 **A. No. They looked at people.**
 18 Q. Oh, the people.
 19 **A. Yeah. I really have told you just about all**
 20 **I know about that.**
 21 Q. So they were looking at the people --
 22 **A. I don't want to mislead you.**
 23 Q. Yeah. That's okay.
 24 They were looking at the people that worked
 25 at these mines?

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1 **A. M-hm.**
 2 Q. Is that right?
 3 **A. Yes.**
 4 Q. And that included the Johnson mine and the
 5 Hammondsville mine?
 6 **A. As I remember.**
 7 Q. Were they former employees or former miners
 8 that had worked there?
 9 **A. I think that's right. You are saying it.**
 10 **I'm not saying it.**
 11 Q. Okay. Well, I'm just asking for what you
 12 recall. It's okay.
 13 **A. Yeah.**
 14 Q. If you are wrong, you are wrong. It's not a
 15 big deal.
 16 **A. All right.**
 17 MR. WILLIAMS: But don't guess.
 18 BY MR. HAMES: Q. I just don't want you
 19 to -- you know, if you are purely guessing about
 20 something is one thing, but if you have some
 21 recollection or some basis for your understanding,
 22 then please let me know.
 23 So what we are talking about is graduate
 24 students looking at some of the former or current
 25 employees that had been working in these mines as to

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1 what they were exposed to, right?
 2 **A. I believe that's right.**
 3 Q. Were there any citations, warnings, fines
 4 issued by NIOSH?
 5 **A. No.**
 6 Q. Okay. Were there any recommendations from
 7 NIOSH?
 8 **A. No.**
 9 Q. Okay. And this is while you were president
 10 of Windsor, right?
 11 **A. Of Windsor, yes.**
 12 Q. Okay. So you had direct involvement with
 13 this issue?
 14 **A. I was aware of the issue, yeah.**
 15 Q. Okay. So what were the documents that your
 16 attorney had that you were looking at?
 17 MS. WOODSON: Asked and answered.
 18 BY MR. HAMES: Q. It was a study from the
 19 graduate students, right?
 20 **A. M-hm.**
 21 Q. And their allegations; is that right?
 22 **A. Right.**
 23 Q. Okay. And then was there anything else
 24 related to the NIOSH dispute?
 25 **A. I don't recall anything else.**

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1 Q. Was there anything from NIOSH itself?
2 **A. I don't recall if there was.**
3 Q. Okay. Was there anything from Windsor in
4 response?
5 **A. Was there anything from Windsor in response?**
6 Q. Yes, sir. Any documents.
7 **A. In the documents that I reviewed, no.**
8 Q. Well, do you know if there ever was a
9 response from Windsor?
10 **A. I think there must have been, but I have no**
11 **recollection of it.**
12 Q. Okay. Was this in relation to any sort of
13 lawsuit?
14 **A. No.**
15 Q. Either a workers' comp case or anything like
16 that?
17 **A. No.**
18 Q. Do you know when the study was done by the
19 graduate students?
20 **A. I really don't know.**
21 Q. I think you said it was around the 1970s?
22 **A. If I did, I was probably guessing because I**
23 **really don't know when it was done.**
24 MR. HAMES: Okay. Well, I will just request
25 that we get a copy of the documents that he's looked

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1 at in preparation for the deposition, including this
2 history of time line and this NIOSH dispute since
3 he's clearly identified them.
4 Q. Was there anything else that you looked at?
5 MS. WOODSON: Objection; asked and answered.
6 BY MR. HAMES: Q. Any other documents when
7 you were getting ready to --
8 **A. None that I specifically recall.**
9 Q. Okay. I didn't ask you this, but with
10 relation to the Johnson Vermont mine, during those
11 years, 1966 to '68, once the talc had been processed,
12 how was it distributed to its customers?
13 **A. In 50-pound paper bags, in one-ton bulk**
14 **containers, and covered hopper cars.**
15 MS. BRAUER: Madam Court Reporter, could you
16 read that back, please?
17 (Record read.)
18 MS. BRAUER: Covered what?
19 MR. WILLIAMS: Hopper cars.
20 BY MR. HAMES: Q. The 50-pound bags, do you
21 recall what the bags themselves looked like?
22 **A. They were the color of a grocery sack.**
23 Q. Brown?
24 **A. Brown, somewhat larger. It had an**
25 **identifying number stenciled on them as they were**

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1 **being filled. The customers had a symbol or a number**
2 **that they used to identify our particular product,**
3 **and so it would be imprinted on the bag.**
4 Q. I'm sorry. Can you describe that last thing
5 you just said?
6 **A. The customers in their coding in their**
7 **warehouses had numbers or a symbol. And whatever**
8 **that number or symbol was, we were required to print**
9 **it on the bags. So it would be marked.**
10 Q. Okay. So your company actually printed the
11 bags, but the logo or the number came from the
12 customer?
13 **A. The customers.**
14 Q. Okay. And do you recall what any of those
15 numbers or any of those symbols were from the
16 customers?
17 **A. No.**
18 Q. Okay. All right. But they were all about
19 50-pound brown paper bags?
20 **A. Most of them, yes.**
21 Q. And they had some internal numbers on them
22 from their company?
23 **A. No.**
24 Q. The bags themselves were not numbered?
25 **A. No.**

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1 Q. Okay. Was there any other identifying
2 markings on those bags from your company before you
3 put the other company's markings on it?
4 **A. There was a symbol in the shape of a shield**
5 **with a cougar going over the top of it. I remember**
6 **that, and that's about all I remember about the**
7 **appearance of the bags.**
8 Q. Okay. And where was that shield with the
9 cougar going over it printed on the bags?
10 **A. It was on the front surface.**
11 Q. About how big was it?
12 **A. Six inches, maybe.**
13 Q. The whole thing?
14 **A. M-hm.**
15 Q. The whole logo?
16 **A. M-hm.**
17 Q. Is that a yes?
18 **A. Yes.**
19 Q. I just have to ask you --
20 **A. Excuse me, excuse me.**
21 Q. Okay. And other than being brown, about 50
22 pounds, with the shield, with the cougar being on it,
23 was there any other identifying marks on those bags?
24 **A. I'm not aware of any other.**
25 Q. Okay. What color was the shield and the

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15 (Pages 57 to 60)

1 cougar?
 2 **A. I think the shield was blue, and the cougar**
 3 **was maybe gray. I really don't have a clear memory.**
 4 Q. Were the cougar and the shield different
 5 colors?
 6 **A. I believe they were.**
 7 Q. Okay. You just don't remember what the
 8 colors were?
 9 **A. I'm not very sure of it.**
 10 Q. That's okay.
 11 Was your company's name printed anywhere on
 12 the bags?
 13 **A. I believe they were stenciled, but I'm not**
 14 **sure enough to say they were.**
 15 Q. Okay. You have some recollection of that,
 16 though, in the back of your mind, that the company's
 17 name was stenciled on the bags?
 18 **A. I have that recollection.**
 19 Q. And the bags were all printed by your
 20 company, right?
 21 **A. The bags were printed by the bag supplier.**
 22 **The shield and the cougar were printed there by the**
 23 **bag supplier.**
 24 Q. Okay. Were there any other forms of
 25 packaging for the talc from the Johnson plant?

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1 **A. I mentioned bags. I mentioned the bulk**
 2 **bags, and I mentioned the covered hopper cars. Those**
 3 **are what I was aware of.**
 4 Q. Were there any particular brand names
 5 associated with the talc coming from the Johnson
 6 facility?
 7 **A. In correspondence, they used the word EMTAL,**
 8 **E-M-T-A-L, and then a number. If they were**
 9 **corresponding to describe a product, they would**
 10 **identify it by EMTAL 41.**
 11 Q. Okay. And that's in correspondence with the
 12 customers or correspondence with --
 13 **A. I had seen correspondence in which there was**
 14 **a reference to the product.**
 15 Q. And who was the correspondence to?
 16 **A. I don't know.**
 17 Q. But it was the customers?
 18 **A. To a customer, I would say, yeah.**
 19 Q. Okay. So a customer would order EMTAL,
 20 whatever number?
 21 **A. M-hm.**
 22 Q. Is that right?
 23 **A. Yes.**
 24 Q. Okay. And do you recall what those numbers
 25 were?

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1 **A. I recall some of the numbers. 41, 42, 43,**
 2 **5500, 549, 599.**
 3 Q. And you knew what those numbers related to?
 4 **A. I don't recall.**
 5 Q. Were they different blends of the talc?
 6 **A. Or different particle size.**
 7 Q. So they are either different fineness or
 8 different particle size, as far as you know?
 9 **A. Fineness and particle size, you are talking**
 10 **about the same thing.**
 11 Q. Okay. But that's what the numbers related
 12 to?
 13 **A. The numbers related to the entire**
 14 **specification for that grade of product.**
 15 Q. So some joint cement company might order
 16 EMTAL with a number after it, and that would mean how
 17 fine it is?
 18 **A. M-hm.**
 19 Q. Is that right?
 20 **A. Yes.**
 21 Q. Okay. Do you recall what numbers after the
 22 EMTAL were for which different industries?
 23 **A. In general, the numbers 500 and above were**
 24 **the products that had been through the flotation**
 25 **process, and they went over to the fine paints and**

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1 **varnishes. The other numbers, I have no recollection**
 2 **of.**
 3 Q. And other than the EMTAL and then the
 4 number, were there any other sort of brands or names
 5 that were associated with --
 6 **A. Not that I'm aware of.**
 7 Q. Okay. Do you recall if the name EMTAL with
 8 a number was ever printed on any of the bags or any
 9 of the packaging?
 10 **A. I don't recall.**
 11 Q. Okay. So then you become the president of
 12 Windsor in 1968, right?
 13 **A. Yes.**
 14 Q. We haven't talked about that yet. So let's
 15 go into that.
 16 At that time, you have the Hammondsville
 17 mine, right?
 18 **A. Yes.**
 19 Q. Were there any other mines?
 20 **A. At that time, no.**
 21 Q. Later on, did some other mines come on?
 22 **A. Yes.**
 23 Q. Okay. So they had the Hammondsville mine
 24 when you started in 1966 and then when the corporate
 25 name change happened and your position became

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<p>1 president, you continued to have that mine under your 2 control? 3 A. Yes. 4 Q. Okay. And what were your duties related to 5 that mine? 6 A. I was president of the corporation. My 7 responsibilities were for everything -- 8 Q. Okay. 9 A. -- including sales. 10 Q. How long did Windsor continue to operate 11 that mine? 12 A. I retired in '89, '90, and they were still 13 operating the mine. 14 Q. Okay. And during this entire time, it was 15 all just for mining talc, right? 16 A. Yes. 17 Q. And then where did the ore go from the 18 Hammondsville mine? 19 A. It followed two paths. One, it went to the 20 beneficiation plant, West Windsor, the flotation 21 plant. The other stream at that time went to the 22 Gassetts mill. 23 Q. So the West Windsor plant is the flotation 24 plant? 25 A. Yes.</p> <p style="text-align: right;">Page 65</p>	<p>1 materials? 2 A. We were specifically looking to demonstrate 3 freedom from asbestos. 4 Q. When did they first start looking to 5 demonstrate that it was free from asbestos? 6 A. 1966. 7 Q. Do you know why they didn't do that with the 8 other mine? 9 A. Do I know why they didn't do it with the 10 other -- 11 Q. Yes, sir. 12 A. -- mine? 13 I don't have any idea. 14 Q. Did you have any say over that as vice 15 president? 16 MS. WOODSON: Objection; vague as to "that." 17 What are you asking him? 18 THE WITNESS: I may have -- my 19 responsibilities in that two-year period were to aid 20 in the sale of the northern operations to someone 21 else, and so my focus was on that. 22 BY MR. HAMES: Q. Okay. But in 1966, a 23 decision had been made to test the Hammondsville mine 24 to see if there was any asbestos contamination? 25 A. And the products from it.</p> <p style="text-align: right;">Page 67</p>
<p>1 Q. And that's for making the -- 2 A. The cosmetic grade. 3 Q. The cosmetic grade. The very refined talc? 4 A. Yes. 5 Q. So that's all wet process? 6 A. Yes. 7 Q. And then the Gassetts mill, what was that 8 one? 9 A. The dry mill, dry grinding. 10 Q. All right. Now, with respect to the 11 Hammondsville mine, do you know if anything was ever 12 done to determine whether or not that mine was 13 contaminated with any form of asbestos? 14 A. Yes. 15 Q. What was done? 16 A. This is all part of the broader question of 17 our efforts to measure and to control and to 18 determine the quality of the ore. 19 Q. Okay. 20 A. And as part of that, we sampled continuously 21 during operations the stream of material produced 22 from the Hammondsville ore and evaluated it 23 independently through McCrone labs for the presence 24 of deleterious material. 25 Q. Okay. And asbestos was one of those</p> <p style="text-align: right;">Page 66</p>	<p>1 Q. And the products? 2 A. Yes. 3 Q. You mean the ore? 4 A. The ore, but we also prepared samples of the 5 finished products and sent them in for evaluation. 6 Q. Oh, okay. Whose decision was it to test it 7 for asbestos? 8 A. Mine. 9 Q. Why did you make that decision? 10 A. Because I became aware of a groundswell of 11 concern in industrial circles for the presence of 12 asbestos and the medical effects of asbestos, and I 13 responded as soon as I became aware of that concern. 14 Q. How did you become aware of it, of issues 15 and concerns on asbestos -- 16 A. I used to subscribe to Chemical Engineering 17 News, and Chemical Engineering News had an orange 18 page in the middle of the magazine. And on that 19 page, there were alerts of where new concerns for the 20 industry could be identified. I saw a commentary in 21 there, and I anticipated that three years downstream, 22 we are going to come to a set of regulations. 23 MS. BRAUER: I'm sorry. Can I have that 24 answer read back? 25 (Record read.)</p> <p style="text-align: right;">Page 68</p>

1 MR. WILLIAMS: Are you fine?
 2 THE WITNESS: Hm?
 3 MR. WILLIAMS: Are you tired?
 4 THE WITNESS: I'm fine.
 5 MR. HAMES: You let me know if you want to
 6 take a break, if you are hungry, or whatever. Okay?
 7 I have a million questions to ask you. So I
 8 apologize. This is going to take a while. You have
 9 a lot of information, and you are very knowledgeable.
 10 Okay.
 11 Q. So it was Chemical Engineering News. There
 12 was an alert that was in that. A publication?
 13 **A. It was a commentary.**
 14 Q. Okay. And so you took the steps to initiate
 15 the testing to see if asbestos was present?
 16 **A. Yes.**
 17 Q. And the purpose for that wasn't just for the
 18 quality of the ore and the product but for also the
 19 health effects?
 20 **A. Well, to ascertain whether we were exposing**
 21 **our employees to something that was being identified**
 22 **as a health risk, but also to be certain that we were**
 23 **not exposing our customers, employees to any of**
 24 **these.**
 25 Q. Okay. And prior to this time of 1966 --

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1 well, do you remember when in 1966 that was?
 2 **A. No.**
 3 Q. Do you remember what issue of Chemical
 4 Engineering News it was?
 5 **A. No.**
 6 Q. I've just got to ask you these questions
 7 because we might be able to find it.
 8 **A. Yeah.**
 9 Q. Do you know who the author was?
 10 **A. No.**
 11 Q. Do you know what that alert was pertaining
 12 to, if it was one particular study for a mine or
 13 something like that?
 14 **A. No. I have no recollection.**
 15 Q. Okay. Nonetheless, prior to that time, had
 16 you ever heard about asbestos being a health hazard?
 17 **A. I'm not sure that I was ever acutely aware**
 18 **of it. You know, I read all kind of commentaries and**
 19 **all kind of things, but I wasn't acutely aware of it.**
 20 Q. Okay. So it would have never been a concern
 21 of yours prior to that time?
 22 **A. No.**
 23 MR. WILLIAMS: I object. That misstates his
 24 testimony.
 25 THE WITNESS: No.

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1 BY MR. HAMES: Q. Well, I don't want to
 2 misstate. I want to make sure we get this straight.
 3 Prior to 1966, when you'd seen that alert,
 4 you had never considered asbestos to be a health
 5 hazard for the industry that you were working in,
 6 correct?
 7 **A. That's right.**
 8 Q. Okay. And then after seeing that, you
 9 initiated the testing.
 10 What was done? What sort of testing was
 11 done?
 12 **A. We embarked on a program to examine our**
 13 **products ourselves. J & J has a very competent**
 14 **technical group. We looked with the best technology**
 15 **that we had available and attempted to discern**
 16 **absence or presence of asbestos fibers.**
 17 Q. Okay. And just for the record, when you say
 18 "J & J," you mean Johnson & Johnson?
 19 **A. Yes.**
 20 Q. Okay. Continue.
 21 **A. It became very obvious very quickly that in**
 22 **order to fully assess the characteristics of our**
 23 **products, that we needed to have continuing**
 24 **assessment, and we needed a lot of samples.**
 25 **The laboratories at J & J, A, didn't have**

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1 **time to do it. B, I wanted it done at arm's length.**
 2 **We went to the Colorado School of Mines Research**
 3 **Institute. We went to Batel and quickly determined**
 4 **that they were not the cutting edge people in this**
 5 **evaluation of mineral things.**
 6 **We discovered -- I don't remember who**
 7 **recommended them -- McCrone Institute. I went to**
 8 **Chicago, sat down with Ian Stewart, and very quickly**
 9 **was able to determine that this was the organization,**
 10 **A, that were the most competent in the country and,**
 11 **B, were able to take on the workload.**
 12 Q. Okay. Let's talk about that stuff a little
 13 bit.
 14 For Johnson & Johnson, did they ever do any
 15 of their own testing prior to hiring McCrone?
 16 **A. I just explained to you that we initially**
 17 **did the examination using Johnson & Johnson**
 18 **facilities.**
 19 Q. Okay. And do you know which individuals
 20 within Johnson & Johnson were involved in that
 21 testing besides yourself?
 22 **A. No.**
 23 Q. Do you know what the results of the testing
 24 was?
 25 **A. They found none.**

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1 Q. They found none, meaning they found zero
 2 asbestos?
 3 **A. Yes.**
 4 Q. This is for the Hammondsville mine only,
 5 right?
 6 **A. The ore stream at Hammondsville mine and the**
 7 **products produced from the ore stream in**
 8 **Hammondsville.**
 9 Q. All right. Let's talk about the testing
 10 just by Johnson & Johnson.
 11 What was done exactly?
 12 **A. I have very limited knowledge. I simply**
 13 **know that we went there initially and then decided to**
 14 **move on.**
 15 Q. Okay. Just so the record is clear about
 16 that, you don't know the methodology for the testing
 17 itself that Johnson & Johnson did on the
 18 Hammondsville mine?
 19 **A. No.**
 20 Q. Okay. That's correct then?
 21 **A. That's correct.**
 22 Q. Okay. But you know the result -- someone
 23 communicated that to you -- was that there was zero
 24 asbestos found?
 25 **A. That's right.**

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1 Q. All right. And was there some sort of
 2 report that was issued? Some study? Was this all
 3 written down?
 4 **A. No.**
 5 Q. Did you ever see any documents at all --
 6 **A. From J & J?**
 7 Q. Yes.
 8 **A. No.**
 9 Q. Okay. Do you remember how it was that you
 10 learned that there was no asbestos found?
 11 **A. In conversation with one of the people in**
 12 **the research laboratory.**
 13 Q. Okay. And you don't remember who that was?
 14 **A. No.**
 15 Q. Okay. And do you know how many tests were
 16 done by Johnson & Johnson?
 17 **A. No.**
 18 Q. Do you know if any samples were taken?
 19 **A. No.**
 20 Q. Then you went on to hire McCrone.
 21 Why was it that after Johnson & Johnson came
 22 up with the zero asbestos result did you go to
 23 McCrone?
 24 **A. Because we need to be continuously assured**
 25 **of the safety and the purity of the product.**

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1 Q. So was there an issue with whether you
 2 thought Johnson & Johnson was capable of doing the
 3 testing?
 4 **A. They didn't have the facility to do the**
 5 **testing. You have to understand that in this period**
 6 **of history, the whole examination of fine particles**
 7 **was evolving through a whole series of**
 8 **technologies --**
 9 Q. Okay.
 10 **A. -- and McCrone was at the leading edge of**
 11 **that.**
 12 Q. Do you know -- all right. Well, we'll walk
 13 through this.
 14 McCrone, when did you first hire them?
 15 **A. In '71, I believe.**
 16 Q. Okay. So when was the first testing done at
 17 Hammondsville by Johnson & Johnson? 1966?
 18 **A. Probably '66, '68, in there. I'm not sure.**
 19 Q. Somewhere between 1966 and 1968 --
 20 **A. Right.**
 21 Q. -- right?
 22 **A. Right.**
 23 Q. That's okay.
 24 And then did that continue -- did that
 25 testing by Johnson & Johnson's own people continue up

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1 until McCrone was hired in 1971?
 2 **A. Well, I think I misstated. I think actually**
 3 **McCrone came on board in '69, but I'm not certain of**
 4 **that.**
 5 Q. Okay. That's fine.
 6 But what I'm getting at is: Did Johnson &
 7 Johnson continue to do testing up until hiring
 8 McCrone, or was it a one-time thing where they did
 9 some testing?
 10 **A. I don't recall.**
 11 Q. Okay. When you had heard that the results
 12 were zero asbestos was found, was that the results
 13 from one test or --
 14 **A. No. There were a series of samples that had**
 15 **done that. The methodology had to be developed, and**
 16 **they wanted to develop the methodology with the**
 17 **agreement that they had. So there were a series of**
 18 **samples over a period perhaps of a year in which they**
 19 **were evaluating methods.**
 20 Q. Do you remember when it was that you learned
 21 that there was no asbestos found?
 22 **A. Probably in '68, but I cannot be certain.**
 23 Q. Okay. Do you know if Johnson & Johnson did
 24 any testing in '69?
 25 **A. I don't know.**

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1 Q. All right. Then how soon after you hired
 2 McCrone did they come out and do some testing?
 3 **A. They didn't come out.**
 4 Q. They didn't come out.
 5 How soon did they do some testing.
 6 **A. Very shortly.**
 7 Q. All right. And what was it about McCrone --
 8 you mentioned a couple of things as to why you hired
 9 them, but what was it about the methodology they were
 10 using for testing versus the other entities that you
 11 were looking at?
 12 **A. As I understood the technology at the time,**
 13 **it was clearly evident, listening to them and**
 14 **watching them, that they were using the best**
 15 **available technology because I had become aware in**
 16 **the course of getting to McCrone of the different**
 17 **methodologies that were available. And McCrone was**
 18 **right at the top of the line on that thing, and**
 19 **that's where I wanted to be.**
 20 Q. Do you remember what those methodologies
 21 were at the time?
 22 **A. No. I get confused between TEM, SEMs, and**
 23 **all the rest of them. I cannot state.**
 24 Q. Okay. At the time, though, you think that
 25 you were up to speed on that --

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1 **A. Yes.**
 2 Q. -- and knew what was being used?
 3 **A. Yes.**
 4 Q. And that McCrone was at the top of the line,
 5 and that's why you hired them?
 6 **A. That's right.**
 7 Q. Okay. And then that's the only testing
 8 company that your employer ever used, right?
 9 **A. On a steady basis, yes.**
 10 Q. Now, were you aware of any other entity
 11 testing any of the ore or the end product from the
 12 Hammondsville mine?
 13 **A. No.**
 14 Q. What about any governmental agency?
 15 **A. Not that I'm aware of.**
 16 Q. And explain how the samples were gathered
 17 and given to McCrone, please.
 18 **A. Okay. The Hammondsville mine was the source**
 19 **of the ore stream to two plants: The Gassetts plant**
 20 **and the West Windsor plant. Both of those plants**
 21 **were operating 24 hours a day, seven days a week. In**
 22 **the process, there were segments where there was a**
 23 **continuous moving stream of the product flowing from**
 24 **device A to device B. And it was true at Gassetts,**
 25 **and it was true at West Windsor.**

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1 **We installed a direct sampling port for the**
 2 **purpose of catching a sample, and we set up a timing**
 3 **schedule for the operator at each of these locations**
 4 **to insert the sampling, bring it out, and dump it**
 5 **directly into a paper bag.**
 6 **These paper bags were accumulated. The**
 7 **sample was made into a pile. Cone and quartering**
 8 **it's called. It's been used for hundreds of years in**
 9 **the mining industry. And we would cone and quarter**
 10 **down to a sample that was representative of the**
 11 **stream that had been sampled, and also it was of the**
 12 **size that was practical to send to McCrone. And**
 13 **these samples were sent off on a regular basis to**
 14 **McCrone, and the results were reported back to us.**
 15 **When we examined a new ore body, we would**
 16 **diamond drill the ore body, cross-section it, in**
 17 **multiple zones. Those diamond drill cores would be**
 18 **pressed and ground and split, and samples of those**
 19 **would go -- before we evaluated and even began to**
 20 **mine a new ore body, we already knew what the quality**
 21 **and the materials were. So we applied it uniformly**
 22 **to the Gassetts mill, to the new mill at Ludlow, and**
 23 **the West Windsor mill.**
 24 Q. Okay. How often was the testing done with
 25 the sample from the ore stream?

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1 **A. Probably four times in an eight-hour shift.**
 2 Q. Four times in an eight-hour shift?
 3 **A. M-hm.**
 4 Q. And then how frequently? In other words --
 5 **A. Four times a year.**
 6 Q. -- for the test itself, how frequently was
 7 the test conducted?
 8 **A. I have tried to recall whether we made our**
 9 **weekly composite. I think initially we did daily**
 10 **compounds. But as results accumulate zero, zero,**
 11 **zero, zero, zero, zero, I think we went over to a**
 12 **week, but I cannot swear to that.**
 13 Q. Was it ever longer than a week?
 14 **A. I doubt it. I doubt it.**
 15 Q. So at least once a week and probably more
 16 frequently in the beginning than in the later years,
 17 the ore sample was being tested?
 18 **A. M-hm.**
 19 Q. Right?
 20 **A. Yes.**
 21 Q. Okay. And so it's gathered up and shipped
 22 off to McCrone.
 23 And how long did it take them to get the
 24 results back to you?
 25 **A. They would accumulate a series of samples,**

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1 and I believe that we -- as it came to be, after the
 2 initial stages, I think that we got a report every
 3 two weeks, but I couldn't swear to that.
 4 Q. Okay. And do you know if the methodology
 5 that McCrone was using evolved over time?
 6 A. I'm sure that it did, but I do not remember
 7 specifically.
 8 Q. Okay. Other than just being sure that it
 9 did, do you know if it actually did?
 10 A. No, I don't. I don't know.
 11 Q. How many people worked for McCrone, if you
 12 know?
 13 A. I think in Chicago there were about -- they
 14 did many, many things besides look for asbestos, but
 15 I think there were probably 50 or 60 people in the
 16 laboratories in Chicago. Subsequently, the
 17 laboratories were moved down to Norcross, Georgia,
 18 and I think there were probably 20 or 30 people in
 19 that laboratory, which was more narrowly operated
 20 than the one in Chicago.
 21 Q. Okay. And you mentioned one individual's
 22 name, but I didn't catch it. That was --
 23 A. Ian Stewart.
 24 Q. Is he still alive?
 25 A. I don't know.

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1 Q. When was the last time you talked to him?
 2 A. Probably 15 years ago.
 3 Q. When you retired?
 4 A. (Witness nods affirmatively.)
 5 Q. Do you recall the names of any other
 6 individuals that worked for McCrone other than
 7 Mr. Stewart?
 8 A. No. There was another person in Georgia
 9 that had a dominant role, but I don't specifically
 10 remember his name.
 11 Q. Okay. How much was McCrone's fee for doing
 12 this work?
 13 A. It was expensive, but I don't remember the
 14 number.
 15 Q. Okay. Do you remember if they charged by
 16 the sample or --
 17 A. By the sample.
 18 Q. -- how they did it?
 19 A. They did it by the sample. We issued a
 20 blanket purchase order to them, and then they worked
 21 off that purchase order.
 22 Q. Okay. And do you know if Windsor kept any
 23 of the results from the testing?
 24 A. I think that it must have been in the files,
 25 but there have been two company transitions since

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1 then, and I have no idea where those files might be,
 2 or even if they exist.
 3 Q. Well, your attorney produced at least one of
 4 them, right --
 5 A. Right.
 6 Q. -- in the form of a letter?
 7 A. M-hm.
 8 Q. And as he asked you, that's the form that it
 9 typically took. It was just a letter from McCrone?
 10 A. Right.
 11 Q. Okay. And they would tell you what the
 12 results were?
 13 A. Yes.
 14 Q. And as you recall, there was never ever any
 15 asbestos found from the Hammondsville mine or any
 16 other mine; is that right?
 17 A. There was never any asbestos found in the
 18 ore.
 19 Q. Okay.
 20 A. There were two occasions over a period of 20
 21 years in which a fiber was seen in a product, and we
 22 were able to demonstrate that the fiber in one
 23 instance was off of the clutch of one of the machines
 24 in the processing plant, and in the other case it was
 25 a particle from the siding on the mill building that

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1 was Transite.
 2 Q. Okay.
 3 A. Those are the only two instances that I was
 4 ever aware of.
 5 Q. And when you say "we were able to
 6 determine," was that you, meaning as an employee of
 7 Windsor, or was it McCrone that determined that it
 8 was off the clutch?
 9 A. In cooperation with them.
 10 Q. Okay. The same with the siding?
 11 A. Yes.
 12 Q. All right. But there was never a positive
 13 result for finding asbestos from any of the mines
 14 from the ore?
 15 A. No, never.
 16 Q. Okay. Are you aware of any employees of
 17 Windsor or Johnson & Johnson ever filing a lawsuit
 18 related to being exposed to asbestos in the mines?
 19 A. Never, in my knowledge.
 20 Q. Okay. You are not aware of any workers'
 21 compensation claims?
 22 A. Never.
 23 Q. Okay. Let me make sure that's clear.
 24 You are not aware of any workers'
 25 compensation claims related to workers being exposed

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1 to asbestos?
 2 **A. I'm not aware of any.**
 3 Q. Okay. And do you know -- okay.
 4 There are the two processing plants, West
 5 Windsor and Gassetts, right?
 6 **A. Initially.**
 7 Q. Were there more that came on later?
 8 **A. Subsequently, the Ludlow mill was**
 9 **constructed.**
 10 Q. How do you spell that?
 11 **A. L-u-d-l-o-w.**
 12 MR. WILLIAMS: That's the name of a town?
 13 THE WITNESS: It's the name of a town in
 14 Vermont.
 15 BY MR. HAMES: Q. Okay. It's in Vermont.
 16 And that's just another processing plant?
 17 **A. The dry processing plant.**
 18 Q. The dry one.
 19 Were there any other mines during your time
 20 with Windsor other than the Hammondsville mine?
 21 **A. Yes. We discovered and opened the Rainbow**
 22 **mine.**
 23 Q. Rainbow?
 24 **A. Rainbow.**
 25 Q. Uh-huh.

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1 **A. The Black Bear mine, the Argonaut mine.**
 2 **There was one more, and I'm having trouble coming up**
 3 **with the name. There was one more, a small one. It**
 4 **operated for two or three years. Clifton.**
 5 Q. Okay. Any other mines that Windsor had --
 6 **A. No.**
 7 Q. -- while you were working there?
 8 **A. No.**
 9 MR. WILLIAMS: You are talking about Vermont
 10 or nationally because we have kind of focused on
 11 Vermont.
 12 MR. HAMES: Well, you guys have focused on
 13 Vermont.
 14 MR. WILLIAMS: We talked about the
 15 California ones. That's why --
 16 BY MR. HAMES: Q. I'm talking about any of
 17 them, any of them that you are aware of.
 18 There is another one, I think you said, in
 19 Calaveras County?
 20 **A. Yes.**
 21 Q. Okay. We'll call it the Calaveras one.
 22 **A. Red Hill mine.**
 23 Q. Red Hill mine?
 24 **A. M-hm.**
 25 Q. Are there any other mines that you are aware

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1 of at all regardless of where they were?
 2 **A. No.**
 3 Q. So we've got Rainbow, Black Bear, Argonaut,
 4 Clifton, and Red Hill, correct?
 5 **A. M-hm. And the Red Hill is in California.**
 6 Q. Okay. You are not aware of any other mines?
 7 **A. No.**
 8 Q. Okay. So when did the company start using
 9 the Rainbow mine?
 10 **A. Oh, boy. 1978, '79. I cannot be specific.**
 11 Q. That's okay. Your best estimate is fine.
 12 **A. Yeah.**
 13 Q. In 1978 or '79, where was that mine located?
 14 **A. Near Ludlow, Vermont.**
 15 Q. All right. What were they mining from that
 16 mine?
 17 **A. Talc ore.**
 18 Q. Anything else?
 19 **A. No.**
 20 Q. I'm going to ask you some of the same
 21 questions for each one of these mines, okay? And
 22 it's going to be a little bit tedious, but we've got
 23 to go through it.
 24 So what I want to ask you is: With the
 25 Hammondsville mine, how was the talc packaged that

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1 ultimately came from that mine? Was it the same
 2 as --
 3 **A. After processing?**
 4 Q. After processing.
 5 **A. After processing. The ore stream that went**
 6 **to West Windsor Mill was beneficiated by a flotation,**
 7 **and the product was shipped in bulk and in bags to**
 8 **customers.**
 9 Q. Okay.
 10 **A. And the bulk were bulk trucks and then**
 11 **subsequently bulk rail cars.**
 12 Q. All right. So it's just open in bulk, in
 13 trucks, or rail cars, right?
 14 **A. And at Gassetts --**
 15 Q. Wait. Hold on a second.
 16 **A. Excuse me.**
 17 Q. So each processing plant has different
 18 packaging?
 19 **A. Oh, yeah.**
 20 Q. So let's break it's down. All right? We
 21 got way too far ahead of ourselves.
 22 So West Windsor is the fine, refined talc?
 23 **A. Yes.**
 24 Q. And it comes in bulk and in bags?
 25 **A. Yes.**

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1 Q. How big were the bags?
 2 **A. 50 pounds.**
 3 Q. Okay. If they are the same as the other
 4 ones that you described, you can just tell me that.
 5 **A. Essentially the same. They are different**
 6 **construction, but essentially the same.**
 7 Q. What was different about them?
 8 **A. Because of the value of the product, it had**
 9 **a tighter valve to minimize leakage. So the paper**
 10 **bag company was able to install in these bags a more**
 11 **secure closure. They were filled with a spout in the**
 12 **top and then a valve closed.**
 13 Q. Okay. So when the end-user wanted to open
 14 up the bag, there was like a valve on the top of the
 15 bag?
 16 **A. No. Generally, they sliced the bag open and**
 17 **dumped it in the hopper.**
 18 Q. Was a valve present, though, on the bag?
 19 **A. It's made of paper. It's part and parcel of**
 20 **the bag.**
 21 Q. Okay. The markings on the bags that came
 22 from West Windsor, were there any?
 23 **A. There were.**
 24 Q. What was there?
 25 **A. Windsor Minerals, Grade 66, 50 pounds.**

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1 Q. And the grade was relating to how refined it
 2 was, the talc was?
 3 **A. With the particular process stream, yes.**
 4 Q. Were there ever any other markings on those
 5 bags that you are aware of?
 6 **A. No.**
 7 Q. Okay. Again, they are brown bags?
 8 **A. Yes.**
 9 Q. In what color was the Windsor Minerals Grade
 10 6 written on the back?
 11 **A. Orange.**
 12 Q. Orange. Okay.
 13 And was there any of the customer's logos or
 14 numbers or any markings of the customer on those
 15 bags?
 16 **A. No.**
 17 Q. Okay. Were you aware of any competitors
 18 having any bags looking similar to the ones that came
 19 from West Windsor?
 20 **A. Ground mineral products are uniformly**
 21 **shipped in 50-pound paper bags. To the degree that**
 22 **that's true, then there were competitors with similar**
 23 **bags, but not with similar logo or grade.**
 24 Q. Okay. All right. How long was the West
 25 Windsor facility in operation?

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1 **A. From 1964 through about 1994 --**
 2 Q. Okay.
 3 **A. -- '95, maybe.**
 4 Q. All right. And then we move on to the
 5 Gassetts mill, which is the dry facility, right?
 6 **A. Right.**
 7 Q. In what forms was the end product packaged
 8 in?
 9 **A. In 50-pound multi-wall (phonetic) bags and**
 10 **then in bulk hopper cars.**
 11 Q. What color were the bags for the Gassetts
 12 mill?
 13 **A. I believe the printing -- as I remember, the**
 14 **printing was black.**
 15 Q. Are they brown bags?
 16 **A. Brown bags.**
 17 Q. With black printing?
 18 **A. Yes.**
 19 Q. What did it say on them?
 20 **A. It said, "Windsor Minerals Grade 36, 50**
 21 **pounds."**
 22 Q. Grade -- sorry?
 23 **A. Grade 36.**
 24 Q. 36. Then it said 50 pounds on it?
 25 **A. Yes.**

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1 Q. Did the West Windsor bags say 50 pounds on
 2 it as well?
 3 **A. Yes. I believe I said that.**
 4 MR. WILLIAMS: Yeah, you did.
 5 MR. HAMES: I think you did. I apologize.
 6 I didn't hear you. All right.
 7 Q. These bags that we are talking about from
 8 the Gassetts mill, was there any other writing on
 9 them that you are aware of?
 10 **A. Not that I'm aware.**
 11 Q. And that's either by your company or by the
 12 customers?
 13 **A. I don't know whether the customers put**
 14 **anything on them after they received them, but we**
 15 **didn't put anything else on them.**
 16 Q. Okay. What about the shield and the cougar?
 17 Did you ever see that --
 18 **A. That went with the sale of Eastern Mag.**
 19 Q. They bought the logo, as far as you know?
 20 **A. Yes.**
 21 Q. Okay. Then we have the Ludlow. Wait. I
 22 didn't ask you one more question.
 23 With respect to the Gassetts mill, when was
 24 that mill in operation?
 25 **A. When was in it operation?**

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1 Q. Yes, sir.
2 **A. It was in operation when I got there in**
3 **1966, and it ran until about 1978 or '79.**
4 Q. Do you know how long it had been in
5 operation before you got there?
6 **A. It had had a prior history as a processor of**
7 **different material, garnet, and I don't know when**
8 **that originated.**
9 Q. Okay. But Windsor purchased it in '66?
10 **A. No. Eastern Mag had acquired it sometime in**
11 **the '50s.**
12 Q. All right. And then the Ludlow -- there is
13 both -- is there a Ludlow mine?
14 **A. There are three mines -- four mines at**
15 **Ludlow. That list of mines that I gave you, the**
16 **Rainbow and the --**
17 Q. Okay. We'll go through each one. We'll go
18 through the mines and the processing plants again.
19 So Hammondsville ore went to the Ludlow
20 facility, right?
21 **A. Yeah. Initially, yes.**
22 Q. Okay. And how long was the Ludlow facility
23 in operation?
24 **A. I believe we opened it in '78 or '79, and it**
25 **was running when I left. It still is running, I**

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1 **believe.**
2 Q. When did the Hammondsville ore go to the
3 Ludlow, Vermont, processing plant?
4 **A. During the initial operations.**
5 Q. Can you give me the years?
6 **A. Oh, probably it was in 1979, but I can't be**
7 **sure.**
8 Q. Okay. So it started in 1979?
9 **A. I believe, yeah.**
10 Q. And then how long did that continue for?
11 **A. I think about a year, and then we got the**
12 **ore bodies in shape up above and fed it from the**
13 **mines above the mill.**
14 Q. Okay. So for that year, what was the -- how
15 was the end product packaged --
16 **A. In 50-pound bags.**
17 Q. -- from Ludlow?
18 **A. In 50-pound bags.**
19 Q. The same way --
20 **A. The same way.**
21 Q. -- you've already described?
22 **A. Right.**
23 Q. Was there any writing on them?
24 **A. The same writing.**
25 Q. Was it exactly the same?

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1 **A. I would think. I'm not aware that we ever**
2 **changed it.**
3 Q. And that's the dry plant. So did it say
4 Windsor Minerals, Grade 36, 50 pounds?
5 **A. Yeah.**
6 Q. So there wasn't any distinction on the bags
7 which plant it came from?
8 **A. No.**
9 Q. All right. Did any of the ore from the
10 Hammondsville mine ever go to any other facility that
11 you are aware that we haven't talked about?
12 **A. No.**
13 Q. Okay. Then we go to the rainbow mine in
14 1978, and that's in Ludlow, Vermont, right?
15 **A. Yes.**
16 Q. Where does the ore go from that one?
17 **A. It goes right down the hill to the Ludlow**
18 **mill.**
19 Q. The Ludlow mill which is also -- the same
20 one that we just talked about?
21 **A. M-hm.**
22 Q. Right?
23 **A. M-hm, yes.**
24 Q. Okay. They started operating that mine, the
25 Rainbow mine -- why was it called the Rainbow mine,

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1 by the way?
2 **A. Because on the day we discovered it, there**
3 **was a beautiful rainbow right on top of the ore body.**
4 Q. Was it an old abandoned mine or something
5 like that?
6 **A. No, no.**
7 Q. What do you mean you discovered it?
8 **A. We prospected for ore, and we found it. We**
9 **found four of them up there.**
10 Q. So this was just an area where you found the
11 ore --
12 **A. Yes.**
13 Q. -- where they did some sample drilling?
14 **A. And after we had located the ore, we had**
15 **measured the dimensions of it, saw that it was**
16 **potentially worthwhile, and we came in and diamond**
17 **drilled it.**
18 Q. Okay. And how long was that mine in
19 operation?
20 **A. It was in operation through 1990.**
21 Q. Okay.
22 **A. But I'm not sure how long the Cyprus ran it**
23 **after that.**
24 Q. Okay. And did the ore from that mine go
25 anywhere else --

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24 (Pages 93 to 96)

1 **A. No.**
 2 Q. -- other than the Ludlow processing plant?
 3 **A. Right.**
 4 Q. Okay. And do you know if any testing for
 5 asbestos was ever done at the Rainbow mine?
 6 **A. Always.**
 7 Q. Okay.
 8 **A. The same testing procedure, the same**
 9 **protocol were applied to all of these ore bodies, all**
 10 **of these sources of ore, and the products that we**
 11 **produced from them.**
 12 Q. Okay. So just to summarize that and to be
 13 perfectly clear about it, the Rainbow mine was tested
 14 in exactly the same fashion that you already
 15 described for the ore stream and the end product?
 16 **A. Yes.**
 17 Q. And it was all done by -- sorry. I'm
 18 getting tired. What's the name of the company?
 19 MR. WILLIAMS: McCrone.
 20 BY MR. HAMES: Q. McCrone, right?
 21 **A. Yes.**
 22 Q. Okay. And you never hired anyone else?
 23 **A. No.**
 24 Q. Okay. And when was that testing for the
 25 Rainbow mine initiated?

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1 **A. As soon as we did the diamond drilling, the**
 2 **diamond drill core was split and ground and samples**
 3 **were sent off to McCrone before we committed**
 4 **ourselves to buy the property on which we had found**
 5 **the ore. So it was '78 or '79. Somewhere in there.**
 6 **I shouldn't be giving you these years, but it was in**
 7 **the '70s.**
 8 Q. Okay. In the late '70s?
 9 **A. In the late '70s, I believe.**
 10 Q. So the testing for asbestos actually
 11 occurred before you even purchased the property?
 12 **A. Yes.**
 13 Q. Okay. And what were the results?
 14 **A. They were absolutely clear.**
 15 Q. Okay. And that continued throughout the
 16 operation of the mine --
 17 **A. Yes.**
 18 Q. -- in that facility?
 19 **A. Yes.**
 20 Q. The processing facility as well?
 21 **A. Yes.**
 22 Q. Okay.
 23 **A. The same sampling technique was applied.**
 24 Q. Okay. Who instructed you on the sampling
 25 technique?

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1 **A. I've been in the mining business for 25**
 2 **years. I knew how to sample things.**
 3 Q. Were there ever any industrial hygienists or
 4 scientists or anyone that came along and said, "This
 5 is how we should test to see if we get a fair
 6 sample"?
 7 **A. We consulted with McCrone on what we were**
 8 **doing, and McCrone, of course, was dealing with**
 9 **samples from hundreds of companies. Ian came down**
 10 **and we walked through what we were doing and how we**
 11 **were doing it before we installed the sampling**
 12 **system, and he approved of it.**
 13 Q. All right. And then there is another mine.
 14 The Black Bear mine, right?
 15 **A. The Black Bear mine, yes.**
 16 Q. Was there a black bear around when you
 17 discovered that one?
 18 **A. Yeah. I almost stepped on him.**
 19 Q. Is that in Vermont as well?
 20 **A. Yes.**
 21 Q. And when was that mine discovered?
 22 **A. It was the last of the mines. So it was**
 23 **probably in '83, '84.**
 24 Q. Okay. And how long was it used for?
 25 **A. We operated out of it intermittently over a**

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1 **period of three or four years.**
 2 Q. So it was finally shut down at some point?
 3 **A. M-hm.**
 4 Q. When was that?
 5 **A. I don't know.**
 6 Q. Was it before 1990?
 7 **A. Just before.**
 8 Q. Okay. So, like, the late '80s?
 9 **A. Yes.**
 10 Q. All right. And where did the ore go from
 11 that particular mine?
 12 **A. To the Ludlow mill.**
 13 Q. Okay. And if you could -- was there any --
 14 Can you describe any testing that was done
 15 to see if asbestos was present --
 16 **A. We drilled it --**
 17 Q. -- at the Black Bear mine?
 18 **A. We drilled it, as I've described on the**
 19 **other properties. We did the sampling on the drill**
 20 **core. And then as it became part of the feed stream**
 21 **to the mills, it was sampled along with the other**
 22 **materials in the mill.**
 23 Q. Okay. And when was that initiated?
 24 **A. It was initiated when we diamond drilled.**
 25 **And then as it came in of the usable ore stream, it**

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1 **A. M-hm.**
 2 Q. And then how soon -- was that a yes?
 3 **A. Yes.**
 4 Q. And then how long after that does it take
 5 the mines on an average to start operating?
 6 **A. About three years to get up to speed, yeah.**
 7 Q. Okay. So then once it was operating, then
 8 the testing continued, as you've already described?
 9 **A. Yes.**
 10 Q. Okay. What's done in the three years for
 11 the preparation of the mine?
 12 **A. Well, first, you cut down all the trees.**
 13 **Then you come in with earth moving equipment and**
 14 **strip the soil. There is very little soil in Vermont**
 15 **because the glacier is stripped in Vermont clean. So**
 16 **you remove the soil, and then you go through -- and**
 17 **in those years, we were using automatic continuous**
 18 **mining machines, which look like a Sherman tank that**
 19 **have a cutting head on the end of a long groove.**
 20 **We would go in and clean the top of the**
 21 **outcrop to get rid of the discolored materials**
 22 **because we couldn't use the discolored material.**
 23
 24
 25

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1 Once we had done that, then we would establish --
 2 these were open pit mines, and we would establish
 3 benches and use the mining machines to mine it.
 4 Q. Okay. All right. And the next mine that
 5 you gave me was the Argonaut mine?
 6 **A. The Argonaut mine was before Rainbow.**
 7 Q. So prior to 1978?
 8 **A. Yes. So it would probably be '75, '76.**
 9 Q. Okay.
 10 **A. Initially, it operated as an underground**
 11 **mine.**
 12 Q. So, Mr. Miller, when you are giving me these
 13 dates, like you gave me the Rainbow one for 1978 --
 14 **A. Right.**
 15 Q. -- that first date, is that the date of
 16 operation or the date of the discovery of the mine?
 17 **A. Probably the date of operation, I would**
 18 **think. And I don't want you to place a whole lot of**
 19 **reliance on those dates because I'm very unsure of**
 20 **the statements.**
 21 Q. That's okay. I think you've made that clear
 22 for the record. I was just wondering which date you
 23 were giving me.
 24 So the Argonaut mine, you think, went
 25 online -- in other words, the operations began --

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1 **A. Right.**
 2 Q. -- in approximately 1975?
 3 **A. Right. And it initially was an underground**
 4 **mine, developed two full levels over a strike length**
 5 **of maybe 2,000 feet on two levels, and then we**
 6 **converted it to an open pit mine.**
 7 Q. Okay. And where was that one located?
 8 **A. Near the Ludlow mill. Just uphill above the**
 9 **Ludlow mill.**
 10 Q. So did the ore from the Argonaut mine also
 11 go to the Ludlow mill?
 12 **A. Yes.**
 13 Q. And how long was the Argonaut mine used?
 14 **A. It's still in operation.**
 15 Q. And this is an underground mine, meaning
 16 there's --
 17 **A. It was an underground mine. It's been**
 18 **converted to an open pit.**
 19 Q. Okay. What's the difference between those
 20 two, if you can just describe that?
 21 **A. Well, the underground mine is just exactly**
 22 **what it says it is. You go underground, excavate the**
 23 **opening, mine the material above the opening, go down**
 24 **to the next level and mine the material between the**
 25 **two levels.**

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1 **An open pit is typically operated by drill**
 2 **and blast methods. In fact, that's the way Luzenac**
 3 **and Cyprus operated them, but we operated them with**
 4 **continuous mining machines. We would establish**
 5 **benches and mine from one wall to the next.**
 6 Q. Okay. Was there testing done at the
 7 Argonaut mine?
 8 **A. Yes.**
 9 Q. Okay. Same fashion?
 10 **A. Same protocol, exactly.**
 11 Q. Okay. And the results never revealed any
 12 asbestos?
 13 **A. Never found anything.**
 14 Q. Okay. Were they looking for a particular
 15 form of asbestos, if you know?
 16 **A. I believe the suspect mineral was**
 17 **chrysotile, but I could not tell you precisely what**
 18 **McCrone was looking for.**
 19 Q. Okay. Do you know if they were looking for
 20 tremolite?
 21 **A. No.**
 22 Q. You don't know?
 23 **A. No. But I know the one they did tremolite**
 24 **deposits.**
 25 Q. All right. Let's move on to the Clifton

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1 mine?
 2 **A. The Clifton mine was the earliest mine and**
 3 **was used to supply the Gassetts mill.**
 4 Q. Okay. So when did the Clifton mine first
 5 begin operating?
 6 **A. Oh, boy. I would say '69 or '70. It**
 7 **operated for three seasons, three years.**
 8 Q. All right. So it ceased to operate in
 9 approximately 1973?
 10 **A. Yes.**
 11 Q. And the ore from that particular mine went
 12 to the Gassetts mill?
 13 **A. It went to the Gassetts mill.**
 14 Q. Okay. And, again, was the testing done
 15 before you purchased the property there?
 16 **A. No. We already owned that property.**
 17 **Eastern Mag had owned that property. I don't know**
 18 **why they had, but they had.**
 19 Q. Okay. So Eastern Mag owned it?
 20 **A. Yes.**
 21 Q. And had they been operating the mine?
 22 **A. No. They owned the property I said.**
 23 Q. Okay. And then Windsor did the testing
 24 there --
 25 **A. Yes.**

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1 Q. -- and found some ore and decided to do the
 2 mining?
 3 **A. Yes.**
 4 Q. Okay. Did they have to purchase the
 5 property from Eastern Mag?
 6 **A. No. It was part of the transaction. The**
 7 **sale to Engelhard Minerals and Chemicals included all**
 8 **of the holdings of Eastern Magnesia Talc Company**
 9 **north of the Winooski River. The rest of it all came**
 10 **to Windsor mill. Everything south of the river.**
 11 Q. So they just happened to have some ore that
 12 they -- and they already owned the property?
 13 **A. M-hm.**
 14 Q. Okay. And they began operation in
 15 approximately 1969 or '70 and ran for about three
 16 years?
 17 **A. Yeah, we did. Windsor Minerals did.**
 18 Q. Right. Okay. And all the ore went to the
 19 Gassetts mill, which we've already talked about,
 20 right?
 21 **A. Yes.**
 22 Q. Okay. And so the way it was packaged and
 23 the way that it was distributed, we've already talked
 24 about, right?
 25 **A. Yes.**

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1 Q. Asbestos was never found at that mine
 2 either, right?
 3 **A. No.**
 4 Q. Okay. And then let's talk about the Red
 5 Hill mine.
 6 **A. It's in California.**
 7 MR. WILLIAMS: Do you want to take a break,
 8 or do you want to keep going?
 9 THE WITNESS: Pardon?
 10 MR. WILLIAMS: Do you want to keep going, or
 11 do you want to take a quick break?
 12 THE WITNESS: No, I'm fine.
 13 MR. HAMES: Why don't we finish talking
 14 about this last mine, and then we'll break for lunch.
 15 Okay?
 16 Q. So there is the Red Hill mine, which is in
 17 Calaveras County, right?
 18 **A. Yes.**
 19 Q. And when did that mine begin its operation?
 20 **A. I cannot with clarity say, but it was in the**
 21 **'80s. Probably '84 or '85. I almost got divorced.**
 22 **Somewhere along in there.**
 23 Q. Because you were in California for so long?
 24 **A. Because I was gone so long, yeah.**
 25 Q. Okay. All right. But it was sometime in

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1 the '80s?
 2 **A. Yes.**
 3 Q. Do you know if it was early, mid, or late
 4 '80s?
 5 **A. No.**
 6 Q. Okay. Had that mine already been in
 7 operation for another company, or --
 8 **A. No. I found it.**
 9 Q. You found it?
 10 **A. M-hm.**
 11 Q. How did you go about finding it?
 12 **A. Well, it's a fairly long story. I found it**
 13 **in a TWA airplane flying to California.**
 14 Q. You just looked out the window and saw --
 15 **A. No. I read a publication by the California**
 16 **Division of Mines and Geology.**
 17 Q. Okay. So was this just a bare piece of
 18 property that you purchased?
 19 **A. Yes. It had been subdivided to 20-acre**
 20 **lots, and they were offering it to people who wanted**
 21 **to live out in the country.**
 22 Q. Okay. And you went out there and did some
 23 sampling?
 24 **A. We found it and did some sampling, enough**
 25 **sampling. We were very sure of what we were doing.**

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1 **We couldn't diamond drill it because we were doing a**
 2 **lot of this kind of on the side. And we diamond**
 3 **drilled it before we ever developed it. We initially**
 4 **surface sampled it extensively.**
 5 Q. So you surface sampled it, and you believed
 6 that there would be some usable ore there?
 7 **A. Oh, we knew there was usable ore there. We**
 8 **were surface sampling extensively to affirm that**
 9 **there were no fibers there.**
 10 Q. Asbestos?
 11 **A. Yes.**
 12 Q. Okay. And what were the results of the
 13 surface samples?
 14 **A. The surface samples were very positive. It**
 15 **had all the characteristics we were looking for for**
 16 **the products that we intended to produce.**
 17 Q. Did surface samples reveal the presence of
 18 any asbestos that you recall?
 19 **A. No.**
 20 Q. Can you describe what the surface sampling
 21 is?
 22 **A. That part of California has a very thin soil**
 23 **cover, a very, very thin soil cover, and so the**
 24 **outcrop was present at the surface. You didn't have**
 25 **to dig to find it. You could walk over the whole**

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1 **thing. About 1,000 feet long. We could take**
 2 **samples, clean samples, all over it, which is exactly**
 3 **what we did.**
 4 Q. Okay. And how did you go about doing the
 5 sampling?
 6 **A. Pick and a canvas sack.**
 7 Q. Okay. And so you physically picked some of
 8 the rock off --
 9 **A. Right.**
 10 Q. -- put it in a canvas bag and then shipped
 11 that to McCrone?
 12 **A. Brought it back to Vermont and ground it and**
 13 **then shipped the ground fraction to McCrone.**
 14 Q. Okay. Did McCrone ever test or sample any
 15 of the actual remnants from the chipping itself for
 16 asbestos?
 17 **A. Well, that's what we made the samples out**
 18 **of.**
 19 Q. Right.
 20 Before it was ground, did they test any of
 21 that?
 22 **A. No, not before it was ground.**
 23 Q. Okay. What were the results?
 24 **A. We found no evidence of asbestos. And after**
 25 **we acquired the property, we diamond drilled it and**

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1 **followed the same protocol. Because we stole the**
 2 **property, really, as a mineral property, and so we**
 3 **could well afford to go ahead and buy the property.**
 4 **If it turned out it wasn't any good, we could just**
 5 **put it on the market. So we went ahead and bought**
 6 **the property and then drilled it after we had owned**
 7 **it.**
 8 Q. What do you mean by you stole the property?
 9 **A. We bought it very reasonably.**
 10 Q. Just for the record, I mean, you are joking
 11 about that?
 12 **A. Yes.**
 13 Q. So you got it at a very cheap price?
 14 **A. Reasonable price.**
 15 Q. All right. And how long did the Red Hill
 16 mine operate?
 17 **A. 13 years.**
 18 Q. Do you know exactly when it ceased its
 19 operations?
 20 **A. No, I don't know exactly when it ceased**
 21 **operation.**
 22 Q. Can you give me an estimate?
 23 **A. I would say about six years ago.**
 24 Q. Okay. Where did the ore go from that mine?
 25 **A. The ore went to the new mill that we built**

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1 **at San Andreas.**
 2 Q. And where exactly was that mill?
 3 **A. In San Andreas, California.**
 4 Q. Okay. All right. We haven't talked about
 5 that one yet.
 6 So what sort of mill was that?
 7 **A. Dry processing.**
 8 Q. And how was the finished material packaged
 9 from that mill?
 10 **A. In bulk trucks, shipped in bulk trucks in**
 11 **50-pound bags and in one-ton sacks.**
 12 Q. Okay. And the 50-pound bags, were they any
 13 different than what you've already described?
 14 **A. No. They were the same.**
 15 Q. And there weren't any specific markings,
 16 lettering, writing of any kind indicating that it was
 17 from the San Andreas facility?
 18 **A. No.**
 19 Q. Okay.
 20 **A. But it was a Western Source product. It**
 21 **wasn't a Windsor Minerals product.**
 22 Q. Did it say Western Source on it?
 23 **A. Yes.**
 24 Q. Okay. Tell me exactly what the bag said.
 25 **A. My recollection the bag said, "Western**

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1 **Source, Incorporated, Grade" and there were three or**
 2 **four grades produced there. Grade X, 50 pounds.**
 3 Q. Okay. And that's it?
 4 **A. Yes.**
 5 Q. And they were brown, and what color was the
 6 writing?
 7 **A. I think they were a dark brown. I'm not**
 8 **sure. Dark brown, I think,**
 9 Q. The bags were?
 10 **A. No. The printing.**
 11 Q. Okay. And the bags themselves were brown?
 12 **A. They were the same, craft paper.**
 13 Q. Okay. Do you know who any of the customers
 14 were for the end product from the San Andreas mill?
 15 **A. I know that the roofing companies all up and**
 16 **down the West Coast of the United States were**
 17 **customers. I know that some of the tape compound and**
 18 **joint cement companies were customers. I know the**
 19 **auto body companies were either customers or**
 20 **potential customers.**
 21 Q. What about the rubber industry?
 22 **A. I never sold a pound.**
 23 Q. How do you know that?
 24 **A. Because I was responsible for mining,**
 25 **manufacture, and sales.**

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1 Q. Are you aware of the presence of any
 2 documents or purchase orders, that sort of thing,
 3 that might reflect who the customers were for that
 4 particular mill?
 5 **A. I have no idea who they are.**
 6 Q. Do you know who any of the customers were
 7 for Western Source?
 8 **A. Yes.**
 9 Q. Who were they?
 10 **A. I just related them.**
 11 Q. No, no. The actual company names.
 12 **A. US Gypsum is one. Berg & Son Roofing is**
 13 **one. Certainty Products Corporation is one. I'm**
 14 **trying to think. The auto body guys down in Los**
 15 **Angeles. I don't really have the whole list in my**
 16 **mind.**
 17 MS. BRAUER: Can I have that answer read
 18 back, please?
 19 MS. LEE: Yeah.
 20 (Record read.)
 21 BY MR. HAMES: Q. What about Goodyear Tire
 22 and Rubber? Do you know if they ever sold any --
 23 THE COURT REPORTER: I'm sorry. Who?
 24 Goodyear Tire and Rubber.
 25 THE WITNESS: Never.

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1 BY MR. HAMES: Q. Okay. All right. Now,
 2 with reference to all these different mines and all
 3 the different manufacturing plants, you are not aware
 4 of the presence of any records at all that were
 5 maintained by your employer pertaining to who the
 6 customers were that were purchasing the end product?
 7 **A. See, I don't have any of those materials.**
 8 **There have been two sales between me and today. I**
 9 **don't have any idea.**
 10 Q. Are you aware of any individuals at all that
 11 I can ask, from Western Source, Windsor, or any other
 12 company, that might know that information pertaining
 13 to who the customers were that were buying the end
 14 product?
 15 **A. No.**
 16 Q. Okay. Do you recall the names of anyone
 17 that you used to work with that either is alive or
 18 dead or is a current or a former employee of your
 19 employer?
 20 **A. A guy named Leroy, who was Portuguese. And**
 21 **I don't remember his last name, but he passed away**
 22 **last year.**
 23 Q. Okay. Do you remember anyone else that you
 24 ever worked with, the names of any of the people that
 25 you worked with?

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1 **A. No.**
 2 Q. Okay.
 3 **A. Not really.**
 4 Q. You worked for this company for a really
 5 long time.
 6 **A. For Western Source? No.**
 7 Q. No, no, no.
 8 For Windsor?
 9 **A. Yes.**
 10 Q. Okay. You were president of the company?
 11 **A. Yes.**
 12 Q. There were a lot of people working under
 13 you, right?
 14 **A. That's right.**
 15 Q. How many employees did you guys have.
 16 **A. At the peak, we had 113.**
 17 Q. Okay. And what about the least?
 18 **A. During the strike, we only had 12.**
 19 Q. Okay. When was that, the 12?
 20 **A. That was in 1974.**
 21 Q. And how long were you down to that few
 22 number of employees?
 23 **A. 16 weeks.**
 24 Q. Okay. And did you return up to 150 or so,
 25 or --

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1 **A. No. We returned back to about 80.**
 2 Q. Okay. So my question to you, Mr. Miller,
 3 is: Other than this guy Leroy that's dead, do you
 4 know the names of any of your former co-workers,
 5 ever?
 6 **A. The names of them?**
 7 Q. Yes, sir.
 8 **A. I know names of the guys that have died.**
 9 Q. Okay. That's fine. I want the names of
 10 anyone, whether or not they are living or dead, that
 11 you worked with because I might want to call them up,
 12 or we might try to find them, or maybe through the
 13 attorneys involved in the case, to see what they know
 14 about it. Okay? So if you can give me their names,
 15 that would be great.
 16 **A. The only one that comes to mind is Steve**
 17 **Hastings, Steven V. Hastings, but he's been dead for**
 18 **2 years.**
 19 Q. Okay.
 20 **A. I really can't bring to mind the specific**
 21 **names of individuals. I really can't.**
 22 Q. Was there someone working directly under
 23 you, like a vice president?
 24 **A. No.**
 25 Q. Okay. Well, you know what we are going to

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1 do is, I'm going to ask you about some of the
 2 corporate history and the structure and stuff. We
 3 can do that after lunch.
 4 But as you sit here right now, you can't
 5 think of anyone, other than Steve Hastings and
 6 someone named Leroy, that you worked with during
 7 those years? I don't care if it's a miner, you know,
 8 or someone in your shipping department or in the
 9 manufacturing plant -- the processing plants or
 10 management or whatever.
 11 **A. Are you at all familiar with the mining**
 12 **industry?**
 13 MR. WILLIAMS: You don't get to ask him
 14 questions.
 15 THE WITNESS: Oh.
 16 MR. HAMES: Unfortunately, it's kind of a
 17 one-way conduit where I get to ask you questions --
 18 MR. WILLIAMS: Why don't we take a break. I
 19 think you are getting tired. Let's just take a break
 20 for lunch.
 21 MR. HAMES: Okay. We'll break for lunch,
 22 and why don't we take an hour. Okay? So we'll be
 23 back at 1:30.
 24 THE VIDEOGRAPHER: This is the end of tape
 25 two, Volume I, for the deposition of Roger Miller.

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1 Going off the record. The time is 12:29 p.m.
 2 (Lunch recess.)
 3 THE VIDEOGRAPHER: This is the beginning of
 4 tape three, Volume I, for the deposition of Roger
 5 Miller. We are back on the record. The time is 1:31
 6 p.m.
 7 You may proceed.
 8 BY MR. HAMES: Q. Mr. Miller, when we left
 9 off, I was asking you about former employees that you
 10 worked with.
 11 Were you able to come up with any names of
 12 anyone?
 13 **A. I came up with four names.**
 14 Q. Okay. Good.
 15 **A. Lynette Rapetti.**
 16 Q. Okay.
 17 **A. She was the office manager at Western**
 18 **Source.**
 19 Q. Who else?
 20 **A. John Fike, F-i-k-e.**
 21 Q. Who was --
 22 **A. And he is from Reading, Vermont, and was a**
 23 **sales representative for me for 10 or 15 years.**
 24 Q. Okay.
 25 **A. Robert Goff, G-o-f-f, who was manager of**

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1 **operations at Windsor Minerals for a period of time.**
 2 Q. Okay.
 3 **A. I thought of another now. Now I have to**
 4 **rethink.**
 5 Q. That's all right. Take your time.
 6 **A. Oh, Lorenzo Rodizza, R-o-d-i-z-z-a. He was**
 7 **the financial officer for Windsor Minerals for 25**
 8 **years. He is very, very ill.**
 9 Q. Okay. Do you know where Lynette is today?
 10 **A. I believe she lives in San Andreas,**
 11 **California.**
 12 Q. What about John Fike?
 13 **A. I thought I told you, Reading, Vermont.**
 14 Q. Is he still alive?
 15 **A. Yes, to my knowledge.**
 16 Q. Robert Goff?
 17 **A. He lives in North Carolina. I don't know**
 18 **where.**
 19 Q. Okay. Do you think he is still alive,
 20 though?
 21 **A. I believe so.**
 22 Q. And Lorenzo, where does he live?
 23 **A. He lives in New Hampshire.**
 24 Q. Do you know where?
 25 **A. No. It's Western New Hampshire.**

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<p>1 Q. Okay. All right. Have we now talked about 2 all of the mines and all the processing plants that 3 you are aware of Windsor owning and operating during 4 your time with them? 5 A. Yes. 6 Q. Okay. You are familiar with the name 7 Luzenac, right? 8 A. Yes. 9 Q. Okay. And what is your understanding of 10 Luzenac? 11 MS. WOODSON: Objection; vague and 12 ambiguous. 13 THE WITNESS: It was a talc operating 14 company based in France. 15 BY MR. HAMES: Q. Okay. And did you ever 16 work for them? 17 A. No. 18 Q. Did they ever come to acquire Windsor, if 19 you know? 20 A. They didn't acquire Windsor. They acquired 21 Cyprus. 22 Q. You worked for Cyprus, right? 23 A. Briefly. 24 Q. It was 19, I believe, '89? 25 A. '89 or '90.</p> <p style="text-align: right;">Page 121</p>	<p>1 all the assets of the company -- 2 A. Yes. 3 Q. -- of Windsor? Okay. 4 And then what was your job title with 5 Cyprus? 6 A. I'm not at all sure what the correct title 7 was. I was part of the transition team to put them 8 in a position to operate the company, and then in the 9 second year I represented them for sales on the West 10 Coast. 11 Q. So that was 1990 -- 12 A. '90. 13 Q. -- that you began sales on the West Coast? 14 A. Right. Specifically to the roofing 15 industry. 16 Q. Okay. Did you learn about the history of 17 the Cyprus organization? 18 A. Very little. 19 Q. Okay. What did you learn about them? 20 A. They had other mining operations in the coal 21 industry and in the copper industry. 22 Q. Okay. Did you learn where their talc mines 23 were? 24 A. I learned a little more about the Montana 25 and California mines, yes.</p> <p style="text-align: right;">Page 123</p>
<p>1 Q. Okay. 2 A. Yes. 3 Q. So what happened to Windsor, if you know? 4 A. What happened to Windsor? 5 Q. Yes, the company, was it purchased by 6 Cyprus? 7 A. It was purchased by Cyprus, yes. 8 Q. And that you believe took place in 1989? 9 A. '89, I believe. 10 Q. Okay. And as president, were you involved 11 in that transaction at all? 12 A. I was involved in the negotiations for the 13 transaction, yes. 14 Q. Okay. So ultimately -- well, tell me a 15 little bit about Cyprus? What do you know about 16 them? What did they do? 17 A. I do. They were in the talc mining business 18 basically in Montana and in California. 19 Q. Uh-huh. 20 A. And that was about all that I knew about 21 them. 22 Q. And so when Cyprus purchased Windsor 23 Minerals, did they abandon the Windsor Minerals name? 24 A. I'm not sure. 25 Q. Did Cyprus completely -- did they purchase</p> <p style="text-align: right;">Page 122</p>	<p>1 Q. Do you know where in Montana the mine was? 2 A. The one that I became familiar with was 3 Three Forks, Montana. 4 Q. Did they have a processing plant? 5 A. At Three Forks. 6 Q. At Three Forks. Okay. 7 Now, when you started working for Cyprus, 8 you said that you were a member of the transition 9 team. 10 What exactly were your job duties? 11 A. To familiarize the new management with the 12 processes and procedures that we had in place. 13 Q. Okay. Do you know the names of any of the 14 employees of Cyprus that worked there either before 15 you, or while you were working with them? 16 A. I don't know really. 17 Q. Okay. So you don't know any of the other 18 names of any of the people that you were training for 19 the transition? 20 A. No. 21 Q. Okay. Were you showing them and explaining 22 to them the operations of Windsor? 23 A. Yes. 24 Q. Okay. And so they essentially purchased the 25 mines that Windsor had owned and the manufacturing</p> <p style="text-align: right;">Page 124</p>

<p>1 facilities?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Had you known Cyprus from your</p> <p>4 previous business dealings? Were they a competitor</p> <p>5 of Windsor?</p> <p>6 A. They were not a direct competitor. They</p> <p>7 were in the talc business --</p> <p>8 Q. Okay.</p> <p>9 A. -- and I knew that.</p> <p>10 Q. All right. And you subsequently learned</p> <p>11 that they had a mine in Three Forks Montana, along</p> <p>12 with the manufacturing plant?</p> <p>13 A. M-hm.</p> <p>14 Q. And they had another one you said in</p> <p>15 California?</p> <p>16 A. I believe there was a plant in Southern</p> <p>17 California. I was never absolutely sure of that.</p> <p>18 Q. Okay. Do you know where in Southern</p> <p>19 California?</p> <p>20 A. No.</p> <p>21 Q. Do you know if they had a manufacturing</p> <p>22 plant in California?</p> <p>23 A. I believe that they did, but I'm not sure.</p> <p>24 Q. What made you believe that they had a mine</p> <p>25 and possibly a manufacturing plant in California?</p> <p style="text-align: right;">Page 125</p>	<p>1 Q. You don't know how many employees there</p> <p>2 were?</p> <p>3 A. No.</p> <p>4 Q. Do you know how many people you were</p> <p>5 training, or they were part of the distribution team?</p> <p>6 A. They brought about 10 or 12 people to our</p> <p>7 operations.</p> <p>8 Q. Okay. And your operations were in Vermont?</p> <p>9 A. Yes, and in California.</p> <p>10 Q. And in California. Okay.</p> <p>11 There is another entity, Western Source,</p> <p>12 right? That's another company?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And what was the relationship of</p> <p>15 Western Source with Windsor?</p> <p>16 A. It was a wholly owned subsidiary of Windsor</p> <p>17 Minerals.</p> <p>18 Q. Okay. Do you know how long Western Source</p> <p>19 had been a wholly owned subsidiary of Windsor?</p> <p>20 A. Since 1978 or '79.</p> <p>21 Q. What were your dealings, if any, with</p> <p>22 Western Source?</p> <p>23 A. I was the president of Western Source.</p> <p>24 Q. Okay. So when you were president of</p> <p>25 Windsor, you were also president of Western Source --</p> <p style="text-align: right;">Page 127</p>
<p>1 A. Because years before, they had acquired</p> <p>2 Southern California Minerals which had begun its</p> <p>3 business in Southern California --</p> <p>4 Q. Okay.</p> <p>5 A. -- is the basis for my conjecture.</p> <p>6 Q. And that's another company, Southern</p> <p>7 California Minerals?</p> <p>8 A. It was an old, old company.</p> <p>9 Q. Okay. Did you ever work for them?</p> <p>10 A. No.</p> <p>11 Q. Do you know if Cyprus, in fact, purchased</p> <p>12 Southern California Minerals?</p> <p>13 A. No.</p> <p>14 Q. No, you don't know, or --</p> <p>15 A. I don't know.</p> <p>16 Q. Okay. And you had heard that Southern</p> <p>17 California Minerals had a mine in Southern California</p> <p>18 somewhere?</p> <p>19 A. I was aware that they did.</p> <p>20 Q. Okay. And this is the mine that you are</p> <p>21 referring to?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. How big of a company was Cyprus when</p> <p>24 they purchased Windsor?</p> <p>25 A. I have no idea.</p> <p style="text-align: right;">Page 126</p>	<p>1 A. Yes.</p> <p>2 Q. -- right?</p> <p>3 What sort of activities did Western Source</p> <p>4 do?</p> <p>5 A. They mined and processed mineral talc.</p> <p>6 Q. Okay. And where was Western Source's mines?</p> <p>7 A. In Red Hill mine.</p> <p>8 Q. That's the one we already talked about?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Did they have any other mines that</p> <p>11 you are aware of?</p> <p>12 A. No.</p> <p>13 Q. Okay. And so when Cyprus purchased Windsor,</p> <p>14 they also purchased Western Source?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Did they purchase any other entities</p> <p>17 that you are aware of simultaneously?</p> <p>18 A. Not that I'm aware of, no.</p> <p>19 Q. Okay. And were you the president of any</p> <p>20 other entities?</p> <p>21 A. No.</p> <p>22 Q. Just those two? What was the reason for</p> <p>23 having two different names? Do you know? Western</p> <p>24 Source and Windsor Minerals?</p> <p>25 A. I don't remember why that was. But we had</p> <p style="text-align: right;">Page 128</p>

<p>1 to be incorporated in California, and it had</p> <p>2 something to do with it.</p> <p>3 Q. Okay. Did you learn about Cyprus's</p> <p>4 operations when you were working for them for the</p> <p>5 last couple of years?</p> <p>6 A. Very little.</p> <p>7 Q. Okay. What did you learn about them?</p> <p>8 A. I learned the nature of their operations in</p> <p>9 Montana, the markets and the products that they were</p> <p>10 producing then. I learned very little about that</p> <p>11 from them. I wasn't really interested at all.</p> <p>12 Q. They were probably more interested in</p> <p>13 learning your operations, right?</p> <p>14 A. Yes. That is true.</p> <p>15 Q. Well, tell me, what were they doing -- they</p> <p>16 were mining talc in Montana at Three Forks?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know what the final product -- what</p> <p>19 it was used for?</p> <p>20 A. I know of one product which was a very, very</p> <p>21 finely divided talc. It was sold in the paper</p> <p>22 industry.</p> <p>23 Q. And that was refined at the Three Forks</p> <p>24 plant?</p> <p>25 A. Yes.</p> <p style="text-align: right;">Page 129</p>	<p>1 Q. Okay. And then do you have some</p> <p>2 understanding that Luzenac purchased Cyprus?</p> <p>3 A. That's my understanding.</p> <p>4 Q. Do you know when that happened?</p> <p>5 A. No.</p> <p>6 Q. You believe it was after the time that you</p> <p>7 were employed by them --</p> <p>8 A. Yes.</p> <p>9 Q. -- after 1990?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Just so I have some understanding</p> <p>12 here, you really don't know much about the operations</p> <p>13 of the Montana mine --</p> <p>14 A. I know nothing --</p> <p>15 Q. -- that Cyprus had?</p> <p>16 A. I know nothing about it.</p> <p>17 Q. Okay. And you don't know what mines Luzenac</p> <p>18 had because you weren't even in the industry then,</p> <p>19 right?</p> <p>20 A. That's right.</p> <p>21 Q. Okay. So did you ever learn about Luzenac</p> <p>22 and where their facilities were, where their mines</p> <p>23 were?</p> <p>24 A. I learned that there were operations in</p> <p>25 France, and I visited them once --</p> <p style="text-align: right;">Page 131</p>
<p>1 Q. Were you aware of any other end products</p> <p>2 that Cyprus had?</p> <p>3 A. No.</p> <p>4 Q. Okay. Do you know how the end product from</p> <p>5 the Montana plant was packaged?</p> <p>6 A. No.</p> <p>7 Q. All right. Do you know if any testing had</p> <p>8 ever been done at the Three Forks mine for the</p> <p>9 purpose of asbestos?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know if Cyprus sold any of its talc</p> <p>12 to the rubber industry?</p> <p>13 A. I don't know.</p> <p>14 MS. BRAUER: Can you read back that last</p> <p>15 question and answer?</p> <p>16 (Record read.)</p> <p>17 BY MR. HAMES: Q. Okay. And then you</p> <p>18 stopped working for Cyprus in approximately 1990,</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And what did you do after that? Did</p> <p>22 you just retire?</p> <p>23 A. Yes.</p> <p>24 Q. And you never had another job after that?</p> <p>25 A. No.</p> <p style="text-align: right;">Page 130</p>	<p>1 Q. Okay.</p> <p>2 A. -- when I was on vacation.</p> <p>3 Q. Okay. Was that after you retired?</p> <p>4 A. Yes, I believe it was.</p> <p>5 Q. Okay.</p> <p>6 A. I'm not absolutely sure.</p> <p>7 Q. Were you aware as to whether or not Luzenac</p> <p>8 had any operations in the United States? Any mines</p> <p>9 or manufacturing plants?</p> <p>10 A. No, I didn't know.</p> <p>11 Q. Okay. Let me ask you this: With respect to</p> <p>12 Windsor, are you aware of the EPA, Environmental</p> <p>13 Protection Agency, ever doing any testing or any</p> <p>14 sampling of any of the mines owned by Windsor?</p> <p>15 A. I'm not aware of it.</p> <p>16 Q. What about any of the mines owned by Western</p> <p>17 Source?</p> <p>18 A. I'm not aware of it.</p> <p>19 Q. What about for Cyprus?</p> <p>20 A. I don't know.</p> <p>21 Q. Okay. And the same question with respect to</p> <p>22 Luzenac?</p> <p>23 A. Yes, I don't know.</p> <p>24 Q. You don't know. Okay.</p> <p>25 And with respect to any one of those</p> <p style="text-align: right;">Page 132</p>

1 entities, do you know if any epidemiological studies
 2 have ever been done?
 3 **A. I don't know.**
 4 Q. Okay. Are you aware of any employees of any
 5 of those entities ever filing any asbestos-related
 6 lawsuits against those companies?
 7 **A. I don't know.**
 8 Q. Are you aware of any workers' compensation
 9 cases?
 10 **A. I don't know of any.**
 11 Q. Okay. And I'm asking you with respect to
 12 all of these different companies --
 13 **A. I understand.**
 14 Q. -- just to try to speed things up.
 15 And what about any just third-party
 16 lawsuits, nonemployees, but just other individuals
 17 that have sued either Windsor or Western Source,
 18 Cyprus?
 19 **A. None that I'm aware of.**
 20 Q. Okay. Can you tell me with respect to
 21 Windsor what the areas of distribution were
 22 geographically for their end product?
 23 MR. WILLIAMS: Do you want to break it down
 24 Vermont versus California?
 25 MR. HAMES: I don't care. If that's

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1 easier --
 2 MR. WILLIAMS: And I don't know if it will
 3 be different. I'm just trying to --
 4 THE WITNESS: From the California
 5 operations, the market was purely the West Coast
 6 states.
 7 BY MR. HAMES: Q. Okay. Which states were
 8 included then?
 9 **A. Washington, Oregon, and California.**
 10 Q. And that's for Western Source?
 11 **A. That's for Western Source, yes.**
 12 Q. The subsidiary?
 13 **A. Yes.**
 14 Q. Okay. Did they have any other areas of
 15 distribution other than those three states?
 16 **A. No.**
 17 Q. Okay. And then what about for Windsor?
 18 What was their area of distribution for their
 19 material?
 20 **A. Windsor produced toiletries talc, which was**
 21 **a proprietary product produced solely for Johnson &**
 22 **Johnson, and it was shipped to Illinois or to New**
 23 **Jersey or to Georgia.**
 24 Q. That's just one particular --
 25 **A. That's the cosmetic product.**

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1 Q. Okay.
 2 **A. Okay.**
 3 Q. For Johnson & Johnson?
 4 **A. The roofing products were shipped to or**
 5 **offered to every roofing plant in the United States**
 6 **at one time or another. They were sold to plants**
 7 **from Texas and Illinois east. It was very difficult**
 8 **to sell our products after the long freight charges**
 9 **to the West Coast.**
 10 Q. Okay. Wait a minute. You confused me
 11 there.
 12 It was sold from plants --
 13 **A. From Vermont to all the roofing plants**
 14 **basically east of Illinois and Texas.**
 15 Q. Okay. So essentially, it was sold to the
 16 roofing industry and the roofing plants throughout
 17 the United States?
 18 **A. Right.**
 19 Q. Were there any states that it did not sell
 20 it's end products to?
 21 **A. There were a number of states without a**
 22 **roofing plant.**
 23 Q. Okay. Do you know which ones?
 24 **A. Not offhand, I don't.**
 25 Q. Okay. All right. So we have the cosmetic.

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1 We have the roofing.
 2 What else? What other distributions?
 3 **A. Cement compound and joint cement was sold in**
 4 **roughly the same distribution pattern as the roofing.**
 5 Q. Can you think of any states that were
 6 specifically excluded?
 7 **A. No.**
 8 Q. In other words, where there were no joint
 9 compound --
 10 **A. Well, there were states without joint**
 11 **compound plants, but I don't remember which of those**
 12 **states they were.**
 13 Q. Okay. All right. Any other areas of
 14 distribution?
 15 **A. No.**
 16 Q. What about for the rubber industry?
 17 **A. We never sold anything to the rubber**
 18 **industry.**
 19 Q. Windsor never did?
 20 **A. No.**
 21 Q. I could have sworn that you had said that
 22 they did.
 23 MR. WILLIAMS: He is talking about Windsor,
 24 not Western Source.
 25 BY MR. HAMES: Q. Western Source sold to

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1 the rubber industry?
 2 **A. No. Windsor never sold to the rubber**
 3 **industry.**
 4 Q. Western Source did sell to the rubber
 5 industry?
 6 **A. No.**
 7 Q. No. Western Source did?
 8 **A. No, never.**
 9 Q. And neither did Windsor?
 10 **A. Neither did Windsor.**
 11 Q. So as far as you are aware, Mr. Miller, did
 12 any of the companies that you worked for -- Windsor,
 13 Western Source, or Cyprus -- ever sell any talc to
 14 the rubber industry?
 15 **A. I have no knowledge of Cyprus sales. I know**
 16 **that Windsor Minerals never sold --**
 17 Q. Okay.
 18 **A. -- nor did Western Source.**
 19 Q. Okay. What about the distribution for the
 20 end product that wound up going to the paint
 21 industry?
 22 **A. From?**
 23 MS. WOODSON: Objection --
 24 BY MR. HAMES: Q. Well, we can do it either
 25 way.

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1 Western Source, what was their area of
 2 distribution?
 3 **A. We didn't sell to the paint industry.**
 4 Q. Okay. What about Windsor?
 5 **A. We didn't sell, other than a very, very**
 6 **small quantity in 1965 to the paint industry. Our**
 7 **products were too coarse to be used in paint.**
 8 Q. Okay. What about Eastern Magnesium? When
 9 you started working for them in 1966 through '68 --
 10 **A. M-hm.**
 11 Q. -- they sold to the rubber industry, right?
 12 **A. It's my understanding they did. I don't**
 13 **have any certain knowledge that --**
 14 Q. Do you know what their area of distribution
 15 was?
 16 **A. The rubber plants would be the controlling**
 17 **element.**
 18 Q. Okay. Are you aware of Eastern ever being
 19 sued by anyone alleging exposure to asbestos from
 20 their mine or from their products?
 21 **A. Not to my knowledge.**
 22 Q. Okay. And are you aware of any workers'
 23 compensation cases filed against them for asbestos
 24 exposure?
 25 **A. Not to my knowledge.**

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1 Q. Okay. Do you know if any of the Eastern
 2 mines ever tested positive for the presence of
 3 tremolite.
 4 **A. Not to my knowledge, but I'm only speaking**
 5 **about Eastern Magnesia in the two years that I worked**
 6 **there.**
 7 Q. Did you ever subsequently learn that any of
 8 their mines --
 9 **A. I never did, no.**
 10 Q. Okay. And let me ask that question with
 11 respect to the other companies that you worked for.
 12 Did you ever learn that any of your former
 13 employers -- that includes Eastern Magnesium, Western
 14 Source, Windsor, and Cyprus -- that any of their
 15 mines ever tested positive for the presence of
 16 asbestos?
 17 **A. I know nothing about Cyprus. I know that --**
 18 Q. So you wouldn't know?
 19 **A. I wouldn't know.**
 20 Q. Okay.
 21 **A. But in the case of the other properties, the**
 22 **properties that we controlled, I never heard of**
 23 **tremolite or asbestos.**
 24 Q. Okay. Are you familiar with what's a
 25 medical disease called mesothelioma?

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1 **A. I'm aware of it.**
 2 Q. Okay.
 3 **A. I'm not familiar with it.**
 4 Q. Have you ever heard of anyone claiming that
 5 they contracted and developed mesothelioma from
 6 working in one of these talc mines?
 7 **A. No.**
 8 Q. Okay. Have you ever given a deposition
 9 before prior to today?
 10 **A. Yes.**
 11 Q. How many times?
 12 **A. Either two or three, but it's been 17 or 18**
 13 **years since I did it.**
 14 Q. Okay. And you think it was two or three
 15 depositions?
 16 **A. Yes.**
 17 Q. Was it two or three different cases?
 18 **A. Yes.**
 19 Q. Do you remember the case names?
 20 **A. No.**
 21 Q. Do you remember any of the parties involved?
 22 **A. No.**
 23 Q. Do you know -- well, first of all, were you
 24 currently an employee -- you must have been.
 25 You were a current employee of Windsor when

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1 you were testifying, right?
 2 **A. Yes.**
 3 Q. Were you testifying in your capacity as the
 4 president of Windsor?
 5 **A. I was testifying in my capacity as the**
 6 **person who had worked at Eastern Magnesium Talc**
 7 **Company.**
 8 MS. BRAUER: Excuse me. Would you read that
 9 answer back?
 10 (Record read.)
 11 BY MR. HAMES: Q. In all two or three
 12 instances?
 13 **A. Yes, I believe they were similar.**
 14 Q. Okay. Was the issue of whether or not
 15 anyone had been exposed to asbestos ever brought up
 16 in those cases or in those depositions?
 17 **A. I don't remember.**
 18 Q. What was the nature of the lawsuit?
 19 **A. I don't remember the specifics of it at all.**
 20 Q. Do you remember just generally what you were
 21 being questioned about?
 22 **A. I was being questioned about the use and**
 23 **application of talc in the rubber industry.**
 24 Q. Okay.
 25 **A. I believe that's true in all three cases,**

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1 **but I'm not absolutely certain of this. It's been a**
 2 **long time.**
 3 Q. Was it an issue with someone getting hurt in
 4 any way, or --
 5 **A. I really don't remember what the allegations**
 6 **were.**
 7 Q. Okay. So you don't know if it was a
 8 personal injury lawsuit?
 9 **A. I don't know.**
 10 Q. Okay. I've just got to ask.
 11 Do you think it might have been something
 12 that related to, like, a breach of contract issue?
 13 **A. I honestly don't know.**
 14 Q. Okay. And it was about your prior
 15 operations with Eastern Magnesium?
 16 **A. My experience during the period of time that**
 17 **I was employed at Eastern Magnesia Talc Company.**
 18 Q. Okay. And I realize it was 17 or 18 years
 19 ago.
 20 Was it essentially the same issue for either
 21 both or all three of those cases?
 22 **A. My recollection is that it might be the**
 23 **same, but I'd have to answer no.**
 24 MR. WILLIAMS: Don't speculate. Tell him
 25 what you remember. Don't speculate. If you don't

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1 know, you don't know.
 2 BY MR. HAMES: Q. You are not sure?
 3 **A. No, I'm not sure.**
 4 Q. Okay. Did you keep a copy of your
 5 deposition?
 6 **A. No.**
 7 Q. Okay. Do you know which lawyers represented
 8 you? Which law firm or the attorney's name?
 9 **A. No.**
 10 MR. WILLIAMS: I think I'll object to that.
 11 That assumes he was represented, and his company was
 12 a party, and I don't --
 13 BY MR. HAMES: Q. Well, did Windsor have
 14 its own attorneys?
 15 **A. No.**
 16 Q. Okay. Did you have an attorney represent
 17 you at your deposition --
 18 **A. Yes.**
 19 Q. -- like you do today?
 20 **A. Yes.**
 21 Q. It wasn't Mr. Williams that was representing
 22 you, was it?
 23 **A. No.**
 24 MR. WILLIAMS: I was still a baby back then.
 25 MR. HAMES: It was only 17 years ago.

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1 MR. WILLIAMS: I was a child.
 2 BY MR. HAMES: Q. All right. Do you know
 3 the name of the law firm that represented you in any
 4 of those?
 5 **A. I honestly have no recollection.**
 6 Q. Do you know where your deposition was taken?
 7 **A. One was in Boston, and one was in Rhode**
 8 **Island. I don't recall where the third one might**
 9 **have been.**
 10 Q. Okay. Was this a situation where you were
 11 living in Boston and gave a deposition there --
 12 **A. No.**
 13 Q. -- or did you have to travel there?
 14 **A. I had to travel.**
 15 Q. Okay. The same with Rhode Island?
 16 **A. Yes.**
 17 Q. And do you recall if you were testifying as
 18 a party in the lawsuit? In other words, you were
 19 suing someone, or your company was suing someone, or
 20 you were being sued, and you were the defendant?
 21 **A. I don't recall the details.**
 22 Q. Okay. Do you remember what the results of
 23 the lawsuits were?
 24 **A. I never knew.**
 25 Q. Okay. So was your entire involvement in

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1 these cases just to go and give a deposition, just
 2 kind of like you are doing today?
 3 **A. Yes.**
 4 Q. And was it just a one-day thing?
 5 **A. Yes.**
 6 Q. And then did you ever go testify in trial?
 7 **A. No.**
 8 Q. Have you ever testified in trial in your
 9 lifetime?
 10 **A. No.**
 11 Q. Do you know where those cases themselves
 12 were actually filed? Which county or which state?
 13 **A. I don't know.**
 14 Q. Okay. Did any of your former employers do
 15 any testing on any of its own employees for, you
 16 know, any medical testing or examinations of any
 17 kind?
 18 MR. WILLIAMS: Can you be a little more
 19 specific? I assume you don't mean routine, like,
 20 physicals, or maybe you do.
 21 MR. HAMES: Well, yeah. Anything like that.
 22 I mean, we can get more specific as we go along,
 23 but --
 24 THE WITNESS: We had pre-employment physical
 25 examinations.

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1 BY MR. HAMES: Q. Okay.
 2 **A. And we had annual physical examinations.**
 3 **This is Windsor Minerals, Western Source.**
 4 Q. Okay.
 5 **A. And in the State of Vermont, there was**
 6 **routine about every third year to examine workers in**
 7 **the dusty trades.**
 8 Q. Okay. And let's talk a little bit about
 9 that.
 10 Was that only in the State of Vermont where
 11 they did that every three years or so.
 12 **A. To my knowledge.**
 13 Q. Okay. The pre-employment physicals, do you
 14 know if those involved anything to do with breathing
 15 or lung function or pulmonary exam, something like
 16 that, chest X-rays?
 17 **A. I don't remember the details of the**
 18 **examination.**
 19 Q. Did you have to go through one of them
 20 yourself?
 21 **A. Yes.**
 22 Q. Okay. Do you remember if you had an X-ray
 23 of your chest?
 24 **A. We had a chest X-ray, but I believe it was**
 25 **part of the Vermont state examination program.**

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1 Q. Okay. So then was it only -- it's only in
 2 Vermont where they had these examinations, like,
 3 approximately every three years?
 4 **A. The only ones I'm familiar with, yes.**
 5 Q. Okay. And what was required in that
 6 examination, if you remember?
 7 **A. They did -- I believe they did --**
 8 MR. WILLIAMS: Don't guess. If you know,
 9 tell him your best recollection.
 10 THE WITNESS: I don't know the details. I
 11 know there was an X-ray. I believe there was a
 12 pulmonary function evaluation.
 13 BY MR. HAMES: Q. Okay. So the X-ray was
 14 of the chest?
 15 **A. Yes.**
 16 Q. And they were looking at the people that
 17 were working, you said, in the dusty trades?
 18 **A. Yes.**
 19 Q. And for Windsor, which employees would those
 20 be?
 21 **A. All of the mine, mill, and office personnel.**
 22 Q. Okay. Who would be excluded from that?
 23 **A. No one.**
 24 Q. Okay. So basically all the employees of
 25 Windsor were tested?

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1 **A. Yes.**
 2 Q. All right. And did you ever learn what the
 3 results of the tests were for any of the employees?
 4 **A. No. In conversation perhaps, but they were**
 5 **confidential to the employee.**
 6 Q. Okay. Did you guys have a human resources
 7 department at Windsor?
 8 **A. Personnel department, yes.**
 9 Q. Personnel department?
 10 **A. Yes.**
 11 Q. Do you remember the names of any of the
 12 people that were working in the personnel department?
 13 **A. No, not really.**
 14 Q. Okay. The personnel department, were they
 15 informed of the results, if you know?
 16 **A. No.**
 17 Q. Okay.
 18 **A. These were confidential examinations.**
 19 Q. Just with the doctor and just with the
 20 worker?
 21 **A. Yes.**
 22 Q. And let me ask you, over time, were some
 23 precautions taken by Windsor to protect its workers
 24 from dust?
 25 **A. Yes.**

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1 Q. What was the reason for that?
 2 **A. We wanted to be able to be certain that our**
 3 **employees are not exposed in excess of the standards**
 4 **that apply.**
 5 Q. Exposed to what?
 6 **A. The particulate material.**
 7 Q. Okay. Was it just the talc that you were
 8 concerned about, or was there anything else?
 9 **A. All of the particulate material.**
 10 Q. Okay. Was there any concern ever about
 11 workers being exposed to asbestos that you are aware
 12 of --
 13 **A. Not that I'm aware of.**
 14 Q. -- other than the testing that we talked
 15 about, of course.
 16 What steps were taken?
 17 **A. We initially sampled the different areas of**
 18 **work in the mine and in the mill with fixed, in-place**
 19 **samplers. As we studied the results of that, we**
 20 **became aware that the human exposures were very**
 21 **different than any exposures on the fixed sites. So**
 22 **we bought a whole series of little samplers that were**
 23 **clamped on to the employees' clothing which breathed**
 24 **the same air that he breathed, and we did this as a**
 25 **routine matter for many, many years.**

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1 Q. Okay. And were any recommendations
 2 implemented, or was there anything that came out as a
 3 result of those tests?
 4 **A. From the results of these evaluations, we**
 5 **would adjust the working environment to protect the**
 6 **employee.**
 7 Q. Okay. And who actually conducted the
 8 testing?
 9 **A. We did.**
 10 Q. You mean Windsor?
 11 **A. Windsor.**
 12 Q. Did they hire someone, like an industrial
 13 hygienist, or --
 14 **A. We had an industrial hygienist that did the**
 15 **evaluations and made the recommendations.**
 16 Q. Was it just one industrial hygienist?
 17 **A. Yes.**
 18 Q. Okay. Do you know who that was?
 19 **A. I don't remember the name. It was a girl**
 20 **from New Zealand, and she went home.**
 21 Q. Okay. How long was this girl from New
 22 Zealand employed by Windsor?
 23 **A. I believe eight years.**
 24 Q. And when did she start?
 25 **A. 1972, perhaps.**

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1 Q. Okay. Had they ever employed an industrial
 2 hygienist before that?
 3 **A. Not to my knowledge.**
 4 Q. Okay. And did they have employ an
 5 industrial hygienist after she left and went home
 6 back to New Zealand?
 7 **A. I believe the duties were assigned to**
 8 **someone else, but I don't know who.**
 9 Q. Okay. What's your basis for believing that
 10 they were assigned to someone else?
 11 **A. Because we continued to get reports on the**
 12 **environment in which the employees worked.**
 13 Q. Okay. So because you got the report, you
 14 assumed someone was doing the work?
 15 **A. Yes.**
 16 Q. Do you know if it was in-house, or someone
 17 else was doing it outside Windsor?
 18 **A. It was done in-house.**
 19 Q. Okay. Was her position -- this woman from
 20 New Zealand, was she a full-time employee?
 21 **A. Yes.**
 22 Q. Okay. Do you know if any sampling was done
 23 by her for the presence of asbestos?
 24 **A. No, I don't know.**
 25 Q. Okay. Do you know if any of the employees

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1 had ever come back with any asbestos-related
 2 illness --
 3 **A. No.**
 4 Q. -- from the examinations that they had?
 5 **A. No.**
 6 Q. No, you don't know, or --
 7 **A. I don't know, but I have no recollection of**
 8 **it.**
 9 Q. Okay. If a government or agency came in and
 10 tested or wanted to test one of the mines owned by
 11 Windsor, would that be something that you would know
 12 about?
 13 **A. Yes.**
 14 Q. That would be your position as president?
 15 **A. Yes.**
 16 Q. And you don't recall that ever happening?
 17 **A. No. Well, wait a minute. The Mine Safety**
 18 **and Health Administration conducted testing in the**
 19 **mines and in the mills for us to meet the established**
 20 **standards that they had established for a mining**
 21 **environment and a mill environment.**
 22 Q. Okay. Did that include the presence of any
 23 carcinogens?
 24 **A. I don't know.**
 25 Q. So outside inspectors from this governmental

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1 agency came and inspected the mines?
 2 **A. M-hm, sampled them.**
 3 Q. They sampled them? They took air samples?
 4 **A. I believe so.**
 5 Q. Were you ever informed of the results of
 6 those samples?
 7 **A. I believe I was, yes.**
 8 Q. Okay. And did you maintain those within the
 9 company?
 10 **A. I would certainly think so, but I don't know**
 11 **for a fact.**
 12 Q. Do you recall if there was ever any mention
 13 of asbestos being present in any of the mines?
 14 **A. I don't remember that there ever was.**
 15 Q. Windsor or Western Source, were they ever
 16 cited by this governmental agency for any violations
 17 at all of any kind?
 18 **A. The examination by the mining authorities**
 19 **included ground support. It included lighting. It**
 20 **included the condition of the walkways, and so we**
 21 **would receive citations on those kinds of matters.**
 22 Q. Okay. Just basic safety things?
 23 **A. Basic safety things.**
 24 Q. But with respect to asbestos --
 25 **A. No.**

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1 Q. -- you are not aware of them ever citing you
 2 or warning Windsor of any violations?
 3 **A. That's correct.**
 4 Q. Okay. You are not even aware if they were
 5 testing for the presence of asbestos, right?
 6 **A. I honestly cannot be sure.**
 7 Q. Okay. You also mentioned that some of these
 8 plants, the manufacturing plants, had one-ton sacks?
 9 **A. Yes.**
 10 Q. Was that actually a bag of some kind, some
 11 kind of container?
 12 **A. It was a polypropylene fabric sack about**
 13 **four feet by four feet by four feet that contained a**
 14 **ton of talc and had a discharge port on the bottom**
 15 **and a filler port on top.**
 16 Q. Okay. And was anything written on those?
 17 **A. I don't recall.**
 18 Q. What color were the sacks?
 19 **A. White.**
 20 Q. All right. And you don't recall if there
 21 was any -- were there any logos, writings, anything
 22 saying the grade or the --
 23 **A. I don't recall.**
 24 Q. Okay. And those were produced by a few
 25 different plants, right? Two different manufacturing

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1 plants?
 2 MR. WILLIAMS: It's different mills is what
 3 he is talking about.
 4 MR. HAMES: Yeah, different mills --
 5 MR. WILLIAMS: Did they come out of all of
 6 them or just one or two?
 7 THE WITNESS: They came out of the later
 8 mills, out of the Ludlow mill and the West Windsor
 9 mill.
 10 MR. HAMES: Okay.
 11 THE WITNESS: Gassetts was never equipped to
 12 handle those bags.
 13 BY MR. HAMES: Q. And do you know who the
 14 customers were who were purchasing the one-ton sacks?
 15 **A. I don't.**
 16 Q. Who was purchasing the bulk material?
 17 **A. The more substantial customers in the**
 18 **roofing industry were acquiring the bulk material,**
 19 **and the cosmetic material was shipped in both to the**
 20 **receiving locations.**
 21 Q. Okay. And was that something Windsor did?
 22 Did they do the shipping, or did the customers pick
 23 it up?
 24 **A. We delivered it to the railroad. The**
 25 **customer paid the freight.**

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1 Q. Okay. Which railroad companies did Windsor
 2 use?
 3 **A. The Green Mountain Railroad, the Delaware**
 4 **and Hudson Railroad, the Boston and Maine railroad**
 5 **and connecting lines.**
 6 Q. Okay. And it was delivered in bulk to the
 7 railroad, right?
 8 **A. M-hm, yes, loaded in cars.**
 9 Q. How was it loaded?
 10 **A. Top loaded through orifices in the roof of**
 11 **the car.**
 12 Q. Okay. So they had some kind of silo of some
 13 kind where the talc was kept?
 14 **A. We had.**
 15 Q. You did?
 16 **A. We did --**
 17 Q. Windsor did?
 18 **A. -- and we transferred from the silo to the**
 19 **rail car, and the customer transferred from the rail**
 20 **car to their silo.**
 21 Q. Right. Okay. Were you aware of Cyprus
 22 owning a talc mine in Warm Springs Canyon in
 23 California?
 24 **A. No.**
 25 Q. Were you aware of them having any talc mines

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1 in Death Valley?
 2 **A. No.**
 3 Q. Were you aware of Cyprus -- hold on a
 4 second.
 5 Were you aware that any of Cyprus's mines
 6 were reported to be contaminated with tremolite?
 7 **A. I was unaware of that.**
 8 Q. Okay. All right. So the only mine that you
 9 are aware of Cyprus having was the one in Three
 10 Forks, right?
 11 **A. Near Three Forks, yes.**
 12 Q. Okay. Do you know -- I don't think I asked
 13 you this.
 14 Do you know if Cyprus was doing any sampling
 15 of the ore, like Windsor was doing, for the Three
 16 Forks mine?
 17 **A. I have no knowledge of that at all.**
 18 Q. Okay. You never heard anything about that?
 19 **A. No.**
 20 Q. Okay. What about the end product?
 21 **A. I have no knowledge of what their sampling**
 22 **was.**
 23 Q. Okay. So just generally, with respect to
 24 that mine, do you know if they ever did any
 25 testing -- if Cyprus ever did any testing for that

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1 mine to see if there was any asbestos present?
 2 **A. I have no knowledge of that.**
 3 Q. Okay. So if we had evidence or information
 4 that the mines that Cyprus owned in Death Valley were
 5 contaminated with tremolite, do you have any
 6 information at all to contradict that?
 7 MS. WOODSON: Objection; calls for
 8 speculation. It's been asked and answered.
 9 THE WITNESS: I have no information
 10 whatsoever.
 11 BY MR. HAMES: Q. Okay. And the same with
 12 respect to the mine that's in Three Forks, Montana?
 13 **A. That's right.**
 14 Q. Okay. Are you aware of -- you never worked
 15 for Luzenac, right?
 16 **A. No.**
 17 Q. So are you aware of Luzenac ever being sued
 18 for claims of asbestos exposure either by workers'
 19 comp cases or personal injury cases?
 20 **A. I have no knowledge at all.**
 21 Q. Okay. Do you know how Cyprus's talc was
 22 packaged?
 23 **A. Cyprus where? In Montana?**
 24 Q. Anywhere.
 25 **A. I have no knowledge of that.**

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1 Q. Okay. What about for Luzenac? Do you know
 2 how they packaged any of their talc?
 3 **A. I saw their packaging operation in France,**
 4 **and it was virtually identical with what we had used**
 5 **in the United States.**
 6 Q. Okay. Do you know if there were any
 7 identifying logos or markings or writing on any of
 8 the Luzenac talc?
 9 **A. I have no idea.**
 10 Q. Okay. What about the end product?
 11 **A. I have no idea.**
 12 Q. And the same with respect to Cyprus? You
 13 don't know?
 14 **A. I don't know.**
 15 Q. Okay. Do you know if Cyprus ever sold any
 16 of its talc to the rubber industry?
 17 **A. I have no knowledge of that.**
 18 Q. Specifically -- so do you know if they sold
 19 any of their talc to the Goodyear Tire and Rubber
 20 Company?
 21 **A. I have no knowledge at all.**
 22 Q. The same with respect to Luzenac?
 23 **A. That's true.**
 24 Q. You don't know if they sold any of their
 25 talc to Goodyear Tire and Rubber Company?

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1 **A. I don't know.**
 2 MR. HAMES: I'm almost done.
 3 Q. Have you ever heard of an individual named
 4 Arthur Langer?
 5 **A. I believe I heard of him early, early on, a**
 6 **long time ago. I'm not sure of that. I may have.**
 7 Q. Have you ever heard that Arthur Langer did
 8 some consulting work for Cyprus?
 9 **A. No.**
 10 Q. All right. Do you know of anyone that did
 11 any consulting work for Cyprus pertaining to whether
 12 or not any of their talc had asbestos contamination
 13 in it?
 14 **A. I have no knowledge of that.**
 15 Q. Okay. The same with Luzenac?
 16 **A. The same with Luzenac.**
 17 Q. All right. And the same with respect to
 18 Eastern Magnesium? Are you aware of anyone doing any
 19 consulting work for them to determine whether or not
 20 there was any asbestos in their talc other than the
 21 company that we talked about?
 22 **A. I'm unaware of any.**
 23 MR. HAMES: Okay. I think that we are
 24 almost done. Why don't we take a break. We've been
 25 going almost an hour, like 50 minutes. So why don't

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1 we take a few minutes and let me look at my notes and
 2 see if I missed anything.
 3 MR. WILLIAMS: Just one quick thing, in the
 4 last couple of questions you've been saying Eastern
 5 Magnesium. It's actually Eastern Magnesia.
 6 MR. HAMES: Okay. Sorry.
 7 MR. WILLIAMS: I don't think it's a big
 8 deal, but just so we are clear.
 9 BY MR. HAMES: Q. Okay. That's your
 10 understanding, right, when I was asking you those
 11 questions?
 12 **A. I understood what you were talking about.**
 13 MR. HAMES: Okay. Good. Thank you for
 14 clearing that up. Okay. Why don't we take a break.
 15 THE VIDEOGRAPHER: Going off the record.
 16 The time is 2:21 p.m.
 17 (Recess.)
 18 THE VIDEOGRAPHER: And we are back on the
 19 record. The time is 2:36 p.m.
 20 You may proceed.
 21 BY MR. HAMES: Q. Okay. Mr. Miller, I just
 22 have a couple more questions for you, and then we'll
 23 be done. Okay?
 24 Is it your understanding that the Eastern
 25 Magnesia Talc Company was essentially purchased by

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1 the Engelhard Corporation?
 2 **A. The northern operations of the Eastern**
 3 **Magnesia Talc Company, its name, all of its rights,**
 4 **north of the Winooski River was purchased by the**
 5 **Engelhard Minerals.**
 6 THE COURT REPORTER: What river?
 7 THE WITNESS: Winooski River.
 8 MR. KOSS: What is the name?
 9 THE WITNESS: Winooski.
 10 BY MR. HAMES: Q. Where is that?
 11 **A. It cuts Vermont in half --**
 12 Q. Okay.
 13 **A. -- between north and south.**
 14 Q. Okay. So what was left that was not sold to
 15 Engelhard?
 16 **A. The Hammondsville mine, the West Windsor**
 17 **mill, the Gassetts mill, and certain properties that**
 18 **Eastern had purchased years ago in Southern Vermont.**
 19 Q. Okay. And what was included in that
 20 purchase then?
 21 **A. The Hammondsville mine --**
 22 Q. No, no.
 23 MR. WILLIAMS: The Johnson mine.
 24 THE WITNESS: Oh, what was included?
 25 BY MR. HAMES: Q. What was included?

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1 **A. The Johnson mine and mill and an abandoned**
 2 **mining property of Waterbury, Vermont.**
 3 Q. Okay. And that's what Engelhard purchased
 4 in about 1968 --
 5 **A. Right.**
 6 Q. -- from Eastern Magnesia Talc Company,
 7 right?
 8 **A. Right, including the name.**
 9 Q. Okay. And they purchased the name Eastern
 10 Magnesia Talc Company?
 11 **A. Yes.**
 12 Q. Okay. And then so what happened with the
 13 remaining assets that were not purchased by
 14 Engelhard?
 15 **A. The new company Windsor Minerals was formed**
 16 **and took all of those southern assets.**
 17 Q. Okay. And then Windsor Minerals created
 18 West -- a subsidiary was created, Western Source,
 19 right?
 20 **A. Some years later.**
 21 Q. Do you know when that was?
 22 MR. WILLIAMS: I think he said that earlier.
 23 BY MR. HAMES: Q. Around 1979 or so?
 24 **A. I believe, but I'm not sure.**
 25 Q. Okay. Then just to finish the cycle with

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1 this, then Cyprus purchased it, Windsor and Western
 2 Source, in about 1990?
 3 **A. Yes.**
 4 Q. And then Luzenac purchased it when?
 5 **A. I don't know.**
 6 Q. Okay. And then with the Eastern Magnesia
 7 Talc Company, in about 1968, they purchased the
 8 assets that you described, right?
 9 **A. Yes.**
 10 MR. HAMES: What? Did I misquote him?
 11 MR. WILLIAMS: Yeah. I mean --
 12 THE WITNESS: Say it again.
 13 BY MR. HAMES: Q. In about 1968, Engelhard
 14 purchases --
 15 MR. WILLIAMS: Oh, Engelhard is right. You
 16 said Eastern Magnesia.
 17 MR. HAMES: I'm sorry.
 18 MR. WILLIAMS: Yes.
 19 BY MR. HAMES: Q. In about 1968, Engelhard
 20 purchased part of the assets of Eastern Magnesia Talc
 21 Company but including the name?
 22 **A. Yes.**
 23 Q. Okay. And did they continue to do business
 24 under that name?
 25 **A. I believe that they did.**

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1 Q. Okay. Did they also do business under
 2 Engelhard?
 3 **A. I don't believe so.**
 4 Q. Okay. Do you know whatever happened to the
 5 Eastern Magnesia Talc Company?
 6 **A. It continued to operate for a number of**
 7 **years and was subsequently sold, I believe, to**
 8 **Vermont Talc Company, but I can't be sure.**
 9 Q. Okay. Do you know whatever happened to the
 10 Engelhard Company?
 11 **A. No.**
 12 Q. Do you know if Johnson & Johnson ever
 13 purchased any assets of the Eastern Magnesia Talc
 14 Company?
 15 **A. No.**
 16 Q. Okay. Do you know if Johnson & Johnson
 17 ever -- you mean no, they didn't, or no, you don't
 18 know?
 19 **A. No, they did not, to my knowledge.**
 20 Q. Okay. Do you know if Johnson & Johnson ever
 21 purchased any of the assets of the Engelhard Company?
 22 **A. I don't know.**
 23 Q. Okay. So do you have any information about
 24 what Johnson & Johnson's role is with respect to
 25 talc? In other words, are they just a customer of

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1 these talc companies, and they just buy the talc for
 2 their product? Is that your understanding?
 3 **A. Right. That's my understanding.**
 4 Q. They never actually purchased a talc company
 5 and mining company or manufacturing company, as far
 6 as you know?
 7 **A. Well, they purchased Eastern Magnesia Talc**
 8 **Company.**
 9 Q. Okay. That's what I thought.
 10 So Johnson & Johnson purchased Eastern
 11 Magnesia Talc Company?
 12 **A. Right.**
 13 Q. When did that happen?
 14 **A. 1964 -- '64 or '65.**
 15 Q. Okay. And so how was it then Engelhard was
 16 able to purchase the Eastern Magnesia Company in
 17 1968?
 18 MS. WOODSON: I'm going to object. It goes
 19 beyond the scope of the witness's knowledge.
 20 BY MR. HAMES: Q. If you know.
 21 **A. Say that again.**
 22 Q. We have the Eastern Magnesia Talc Company
 23 being purchased by Johnson & Johnson in approximately
 24 1964, correct?
 25 **A. Right.**

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1 Q. Okay. So what was there for Engelhard to
 2 purchase in 1968?
 3 **A. The northern operations --**
 4 Q. So the --
 5 **A. -- north of the Winooski River.**
 6 Q. So the southern operations, were those sold
 7 to Johnson & Johnson?
 8 **A. They were owned by Johnson.**
 9 Q. They were already owned by Johnson?
 10 **A. They were owned by Johnson & Johnson by**
 11 **virtue of having acquired Eastern Magnesia Talc**
 12 **Company, and so we sold off the northern operations**
 13 **to Engelhard.**
 14 Q. Okay. And so really there was -- when you
 15 started working for the Eastern Magnesia Talc
 16 Company, you were working for the northern division,
 17 or were you --
 18 **A. I worked for the whole organization.**
 19 Q. Were you an employee of Johnson & Johnson?
 20 **A. I was an employee of Eastern Magnesia Talc**
 21 **Company.**
 22 Q. Okay. A subsidiary of Johnson & Johnson?
 23 **A. Yes.**
 24 Q. Okay. Were you aware of Johnson & Johnson
 25 owning any other talc mine operations?

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1 **A. I was aware that they did not.**
 2 Q. Okay. And that was the whole reason why
 3 they purchased that southern portion of the Eastern
 4 Magnesia Talc Company?
 5 **A. Right.**
 6 MS. WOODSON: Objection; calls for
 7 speculation, beyond the scope of the witness's
 8 knowledge.
 9 MR. HAMES: All right. I just wanted to
 10 make sure I got all that straight. Now I have just
 11 one document here that's been produced in this case.
 12 I just want to hand it to you -- I'll read what it
 13 is. It's a verification of Luzenac Western Source
 14 Corporation's Inc.'s supplemental response to
 15 plaintiff's special interrogatories, and it's in this
 16 case.
 17 Q. If you can take look at that, please. We
 18 will go ahead and mark that.
 19 What were you using? Numbers?
 20 MR. WILLIAMS: Yeah. That will be 4.
 21 MR. HAMES: Okay. Why don't we call it --
 22 MR. WILLIAMS: Why don't we just call it 1,
 23 2, 3, 4.
 24 MR. HAMES: We'll do Plaintiff's A. Okay.
 25 Just so we can to separate it out.



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1 THE WITNESS: All right.
2 (Plaintiff's Exhibit A marked.)
3 BY MR. HAMES: Q. Okay. Is that your
4 signature at the bottom of that page?
5 **A. Yes.**
6 Q. Okay. And on that verification page, is
7 there anything in there that you believe is
8 incorrect?
9 **A. From reading it, no.**
10 MR. HAMES: Okay. All right. That's all I
11 wanted to ask you. I think that those are all my
12 questions at this time. The only thing that we'd
13 want is we would request, you know, the documents
14 that we talked about that you guys might have that
15 he's looked at, that he looked at in preparation for
16 his deposition. And if we need to meet and confer on
17 that, we can do that. And if we need to further
18 depose him, we'll do that, and I reserve my rights to
19 do that.
20 MR. WILLIAMS: Okay.
21 MR. HAMES: I don't know if we will need to
22 or not.
23 MR. WILLIAMS: I mean, I'm not agreeing to
24 it. He is not a party. We are not a party.
25 MR. HAMES: Right.

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1 MR. WILLIAMS: So whatever -- I mean, I
2 don't know the California practice. You guys can
3 work that out.
4 MR. HAMES: Yeah.
5 MR. WILLIAMS: I understand your position.
6 MR. HAMES: Okay. Do you guys have anything
7 for the record? Do you have any questions or
8 anything at all? All right.
9 Thanks, Mr. Miller.
10 THE WITNESS: Thank you.
11 MR. HAMES: Let's go off the record.
12 THE VIDEOGRAPHER: This is the end of the
13 deposition of Roger Miller. The total number of
14 tapes are three. All original videotapes are
15 retained at Tooker & Antz, 350 Sansome Street, Suite
16 700, San Francisco, California 94104. (415)
17 392-0650. We are now going off the record. The time
18 is 2:45 p.m.
19 (Time noted: 2:45 p.m.)
20
21
22
23
24
25

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1 CERTIFICATE OF DEPOSITION OFFICER
2 I, JOANNE BALBONI, CSR No. 10206, duly
3 authorized to administer oaths pursuant to Section
4 2093(b) of the California Code of Civil Procedure,
5 hereby certify that at the commencement of the
6 foregoing deposition, the witness stated he or she
7 would testify the truth, the whole truth, and nothing
8 but the truth in the within-entitled cause; that said
9 deposition was taken at the time and place therein
10 stated; that the testimony of said witness was
11 reported by me and was thereafter transcribed under
12 my direction into typewriting by computer; that the
13 foregoing is a full, complete and true record of such
14 testimony; and that the witness was given an
15 opportunity to read and correct said deposition, and
16 to subscribe the same.
17 I FURTHER CERTIFY that I am not of counsel
18 or attorney for either or any of the parties in the
19 foregoing deposition and caption named, nor in any
20 way interested in the outcome of the cause named in
21 said caption.
22 
23 DEPOSITION OFFICER 
24 I hereby certify this copy is
25 a true and exact copy of the original
DEPOSITION OFFICER

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1 Mr. Roger Miller
2 C/O Roberta Woodson, Esq.
3 McKenna Long & Aldridge
4 101 California Street, 41st Floor
5 San Francisco, California 94111
6 Re: Consuelo Lopez vs. ACandS, Inc., et al.
7 Superior Court of the State of California,
8 County of San Francisco
9 Dear Mr. Miller:
10 Your deposition taken in the above-entitled matter
11 has been transcribed. This deposition will be
12 available at our offices for reading and signing by
13 you for a period of thirty (30) days from the date of
14 this letter, after which time the original of your
15 deposition will be sealed and sent to the office
16 which noticed the deposition, in accordance with
17 Section 2025(q)(1) of the California Code of Civil
18 Procedure.
19 Sincerely,
20 Tooker & Antz
21 cc: All Counsel
22
23
24
25

Page 1

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Exhibit 224

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TITLE 21--FOOD AND DRUGS
CHAPTER I--FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES
SUBCHAPTER G--COSMETICS
PART 740 -- COSMETIC PRODUCT WARNING STATEMENTS
Subpart A--General

Sec. 740.1 Establishment of warning statements.

(a) The label of a cosmetic product shall bear a warning statement whenever necessary or appropriate to prevent a health hazard that may be associated with the product.

(b) The Commissioner of Food and Drugs, either on his own initiative or on behalf of any interested person who has submitted a petition, may publish a proposal to establish or amend, under subpart B of this part, a regulation prescribing a warning for a cosmetic. Any such petition shall include an adequate factual basis to support the petition, shall be in the form set forth in part 10 of this chapter, and will be published for comment if it contains reasonable grounds for the proposed regulation.

[40 FR 8917, Mar. 3, 1975, as amended at 42 FR 15676, Mar. 22, 1977]

Plaintiff's Exhibit
No.

P-324

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7. </scripts/cdrh/cfdocs/search/default.cfm?FAQ=true>
8. <http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Databases/ucm135680.htm>

Exhibit 225

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

---OOO---

TERESA ELIZABETH LEAVITT
and DEAN J. MCELROY,
Plaintiffs,

vs.

JOHNSON & JOHNSON, et al.,
Defendants. No. RG17882401

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

---OOO---

PUI FONG and THAI WONG,
Plaintiff,

JCCP CASE NO. 4674

vs. No. BC675449

JOHNSON & JOHNSON, et al.,
Defendants.

TRIAL PRESERVATION
VIDEOTAPED DEPOSITION OF JAMES PETER MITTENTHAL
(PMQ/COR Johnson & Johnson; Johnson & Johnson
Consumer, Inc.)

VOLUME III, Pages 444 - 602

Taken before EARLY K. LANGLEY, B.A., RMR, RSA, CLR
CSR No. 3537

October 19, 2018

Aiken Welch Court Reporters
One Kaiser Plaza, Suite 250
Oakland, California 94612
(510) 451-1580/(877) 451-1580
Fax: (510) 451-3797
www.aikenwelch.com

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<p>1 Exhibit 43 11/23/93 memo, R. Denton to W. 494 Ashton, Trip Report, Talc Validation Team Meeting, 11/16/93 Windsor, Vermont</p> <p>2</p> <p>3</p> <p>4 Exhibit 44 10/17/94 letter, Luzenac America 501 letterhead, to J. O'Shaughnessy</p> <p>5</p> <p>6 Exhibit 45 Superior Court, San Diego, Selby 504 v Johnson & Johnson, Defendant Johnson & Johnson Consumer Products, Inc.'s Response to Plaintiffs' Requests for Admission</p> <p>7</p> <p>8</p> <p>9 Exhibit 46 Superior Court, Alameda County, 531 Leavitt v Johnson & Johnson, Defendant Johnson & Johnson's June 11, 2018 Amended Responses to Plaintiffs' Requests for Production of Documents Set 3</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 For the Defendants Johnson & Johnson; Johnson & Johnson</p> <p>2 Consumer, Inc.:</p> <p>CHRISTOPHER COX</p> <p>RICHARD T. BERNARDO (Via phone)</p> <p>Skadden Arps, Slate, Meagher & Flom, LLP</p> <p>4 Times Square</p> <p>New York, New York 10036</p> <p>(212) 735-3453</p> <p>christopher.cox@skadden.com</p> <p>richard.bernardo@skadden.com</p> <p>7</p> <p>Also present:</p> <p>Jonathan Jaffe</p> <p>ESI Consultant</p> <p>Jim Partridge</p> <p>Tele-Video Production Services</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 449</p> <p>1 --oOo-- 2 PROCEEDINGS 3 --oOo-- 4 THE VIDEOGRAPHER: We are on the record at 5 11 -- excuse me. We are on the record at 6 9:01 a.m. 7 This marks -- today's date is October 19, 8 2018. 9 This is the continuation of the deposition 10 of James Mittenenthal. This is Volume III, Disk 11 Number 1. 12 Counsel, you may proceed. 13 MR. SWANSON: Thank you. 14 JAMES PETER MITTENTHAL 15 previously sworn as a witness, 16 testified as follows: 17 DIRECT EXAMINATION BY MR. SWANSON (Cont'd): 18 Q. Good morning, Mr. Mittenenthal. 19 A. Good morning. 20 Q. Your deposition is continuing now, and are 21 you ready to go forward today? 22 A. Yes. 23 Q. Any reason you can't give your best 24 testimony? 25 A. No.</p>	<p style="text-align: right;">Page 451</p> <p>1 and acknowledge receipt and that sort of thing? 2 A. Yes. 3 Q. And does the software -- and what's the 4 name of the software? 5 A. Exterro. 6 Q. And it says, "Visit the legal hold manager 7 compliance portal, legal hold manager." 8 And does the software track who the 9 intended recipient -- recipients are? 10 A. Of what? 11 Q. Of the hold. In other words, to whom it's 12 sent? 13 A. Yes. 14 Q. And I notice there's a section in here 15 that tells recipients that they can suggest other 16 recipients of the hold. 17 Did you see that? 18 A. Can you reference me to that section? 19 Yes. I see it. 20 Q. Yes. "Suggest other custodians." 21 Do you see that? 22 A. Yes. 23 Q. And does the software track who gets 24 suggested? 25 A. It's my understanding that the company can</p>
<p style="text-align: right;">Page 450</p> <p>1 Q. Okay. So I want to ask you a couple 2 follow-ups on one of the legal holds. So if you'd 3 go to Exhibit 1A, and that's Tab 1A in your 4 binder. 5 Do you have that in front of you? 6 A. Yes, I do. 7 Q. Now, this is the 2' -- I think it's the 8 current or most recent Johnson & Johnson legal 9 hold notice in asbestos-related talc litigation; 10 correct? 11 A. Yes. 12 Q. And I wanted -- I want to go through a 13 little bit on this notice. It looks like there is 14 some kind of software that notes -- a notice is 15 sent via an email, I guess; is that right? This 16 notice that -- is that how it gets sent to 17 recipients? 18 A. Yes. 19 Q. Okay. And there is some kind of software 20 that's related to this in terms of them 21 acknowledging receipt in various things; is that 22 right? 23 A. Yes. 24 Q. And does that software track certain kinds 25 of information in terms of when they receive it</p>	<p style="text-align: right;">Page 452</p> <p>1 add those people to the list and that they would 2 be tracked. 3 Q. Does the software track when each 4 recipient acknowledges receipt of the hold? 5 A. I believe it does. 6 Q. Okay. And does the software track who was 7 trained on legal holds, or what the -- anything -- 8 information about the recipients of the hold's 9 training? 10 A. From my fact finding, I have other 11 vehicles, eUniversity, other modules unrelated to 12 Exterro that track training. And I can pull out 13 my notes for those. 14 Q. We may do that later. 15 But so that the -- you're not aware that 16 this software actually would have that 17 information; correct? 18 A. Correct. 19 Q. Okay. I noticed that it -- it states here 20 in the first page that "the instruction is within 21 seven days, please visit the legal hold manager 22 compliance portal," and "review and acknowledge 23 this notice." 24 Now, what is triggered with -- what 25 triggers the seven days? At the point they open</p>

<p>Page 453</p> <p>1 that email, the recipient of the soft -- of the 2 email regarding this legal hold? In other words, 3 I work for Johnson & Johnson, I get an email with 4 this legal hold notice. If I didn't open my email 5 for several days, does that seven days start 6 running when I open my email? 7 A. I would -- I would be guessing. My -- I 8 would -- I have a sense of how it works, but I -- 9 I'm not -- I would need to do further research to 10 determine that. 11 Q. I'm interested in what your -- I don't 12 want you to guess, but, based on your experience, 13 what is your expectation? 14 A. My expectation would be from the -- from 15 the date sent. 16 Q. From the date the email gets sent? 17 A. Yes. 18 Q. Okay. Do you know why they give seven 19 days for that? Couldn't somebody -- for example, 20 if I'm an employee and I open the email 21 immediately and I see that there's this legal hold 22 notice, why so long before I have to acknowledge 23 that I've gotten the legal hold notice? 24 MR. COX: Object to the form of the 25 question.</p>	<p>Page 455</p> <p>1 MR. COX: Object to the form. 2 THE WITNESS: Well, I'm not sure if it's a 3 philosophical or legal distinction. But if I see 4 the email, I can -- I'm able to comply even before 5 I acknowledge compliance. So the email tells me 6 that there's something going on and that I have 7 something I should or should not be doing. 8 The acknowledgment obviously is a formal 9 indication that I read and understood. It doesn't 10 mean I can't be doing those things before I even 11 can formally comply with the -- with the notice. 12 BY MR. SWANSON: 13 Q. Right. But the idea of having the receipt 14 acknowledgment is so that the company can track 15 who knew when; right? 16 A. Well, I don't know if I can speculate to 17 all the motives. It certainly gives the company a 18 sense of -- from an overall perspective who has -- 19 who has acknowledged and, therefore, a way to 20 understand who needs to be followed up on, who 21 needs to have their manager contacted, who needs 22 additional action taken. 23 Q. Right. Now, if somebody gets it and they 24 don't acknowledge it and they wait the maximum 25 period -- let's say this person doesn't have good</p>
<p>Page 454</p> <p>1 THE WITNESS: I mean, it calls for 2 speculation on my part, but perhaps someone is out 3 of the office on a plane traveling over a long 4 weekend. It would give them an opportunity to get 5 in front of a place where they can operate the 6 Chrome browser and access the portal. 7 BY MR. SWANSON: 8 Q. Okay. That's -- you're assuming that, 9 correct, based on your experience? 10 A. Those would be -- as I mentioned, I don't 11 know the precise reasons seven days was chosen. I 12 can only speak to why there may be some days given 13 in terms of the time period. 14 Q. Okay. Now, isn't it true that obviously 15 the longer that you wait to require 16 acknowledgment, the greater the chances that some 17 document could get destroyed that should have been 18 preserved under the notice; correct? 19 MR. COX: Object to the form. 20 BY MR. SWANSON: 21 Q. Well, let's say if you gave 30 days, 22 right, so any period that you wait beyond what's 23 minimally necessary to acknowledge receipt of that 24 increases the likelihood that documents that are 25 subject to the hold get destroyed; true?</p>	<p>Page 456</p> <p>1 intentions, and you said, you know, you're 2 assuming somebody is going to -- they see the 3 email, they can comply anyway. But until they 4 acknowledge it, the company has no way of knowing 5 if somebody actually read it and looked at it, 6 and, furthermore, if somebody had an intention to 7 get rid of something within that window of seven 8 days, that would give them the opportunity to do 9 it before they even acknowledge receipt; correct? 10 A. Well -- 11 MR. COX: Object to the form. 12 Go ahead. 13 THE WITNESS: I'm sorry. 14 The company does not know that the person 15 has formally acknowledged until they do so. But 16 this -- the system operates against the backdrop 17 of all the training and records management 18 awareness and legal hold awareness so that the 19 automated portion of it that I get a legal hold 20 and I'm responding to it formally is just a part 21 of the overall duties and expectations and 22 training for every custodian. And so it's 23 understood that if I get a notice, it's not the 24 first time I've ever heard of a -- what a legal 25 hold is and what my responsibilities are.</p>

<p>Page 457</p> <p>1 MR. SWANSON: I'm going to move to strike 2 that last answer as being nonresponsive. 3 (Whereupon, Plaintiff's Exhibit 38 was 4 marked for identification.) 5 BY MR. SWANSON: 6 Q. Mr. Mittenenthal, I'm handing you Exhibit 38 7 to your deposition. 8 Do you have Exhibit 38 in front of you? 9 A. I do. 10 Q. And this is a Johnson & Johnson document 11 dated April 15, 1969, and the subject matter is 12 "alternative domestic source" -- "talc sources." 13 Do you see that? 14 A. "Alternate domestic talc sources." 15 Q. "Alternate" -- thank you -- "domestic talc 16 sources." 17 You have been asked about this document 18 before; correct? 19 Do you remember this document? 20 A. I frankly don't recall. 21 Q. Okay. You see here in paragraph -- 22 paragraph 3 here that -- well, the author of this 23 is a T.M. Thompson, M.D., and he's writing to 24 William Ashton, W.H. Ashton, at Johnson & Johnson; 25 correct?</p>	<p>Page 459</p> <p>1 General Johnson and several pediatricians 2 expressing concern over the possibility of adverse 3 effects on the lungs of babies or mothers who 4 might inhale any substantial amounts of our talc 5 formulations. In the past we have replied to the 6 effect that, since our talc is essentially all of 7 the platelet-type of crystalline structure and is 8 of a size which would not be likely to enter the 9 pulmonary alveoli, we would not regard the usage 10 of our powders as presenting any hazard." 11 Do you see that? 12 A. Yes, I do. 13 Q. And then next sentence says, "Obviously, 14 if we do not" -- "if we do include tremolite in 15 more than unavoidable trace amounts, this sort of 16 negation of such inquiries could no longer 17 pertain." 18 Do you see that? 19 A. Yes. 20 Q. And then if you look at the next page, the 21 second paragraph, you see where it says -- author 22 says, "Since pulmonary diseases including 23 inflammatory fibroplastic and neoplastic types 24 appear to be on the increase, it would seem to be 25 prudent to limit any possible content of tremolite</p>
<p>Page 458</p> <p>1 A. Well, I see that's what's written on the 2 document, yes. 3 Q. That's what the document says. 4 And Mr. Thompson tells Mr. Ashton, "We 5 have been concerned to a much greater extent with 6 regard to possible dangers relative to inhalation 7 of the talc with a spicule or needle-like 8 crystalline structure as compared to the flat 9 platelet-type of crystalline structure." 10 Do you see that? 11 A. Yes. 12 Q. Then he goes on to talk about how there 13 are reports in the literature of talcosis. 14 Do you see that? Right after that 15 sentence. 16 A. I'm looking for... 17 Q. There are reports in the literature? 18 A. Oh, yes. Yes. Yes. 19 Q. Okay. 20 If you go towards the bottom, the 21 second-to-last sentence. It says, "In the past we 22 have applied" -- oh, wait. "Furthermore." Do you 23 see that halfway through that paragraph? 24 "Furthermore we have occasionally received 25 inquiries from various individuals including</p>	<p>Page 460</p> <p>1 in our powder formulations to an absolute minimum. 2 To the best of my knowledge, we have never been 3 faced with any litigation involving either skin or 4 lung penetration in our formulas." 5 Then it talks about they were "faced with 6 more or less serious problem resulting from what 7 we have considered to have been unjust accusation 8 of danger due to the presence of small amount of 9 boric acid in our talc." 10 Do you see that? 11 MR. COX: Object to the form of the 12 question. 13 THE WITNESS: Yes. 14 BY MR. SWANSON: 15 Q. It says, you see the sentence here, "It is 16 conceivable that a similar situation might 17 eventually arise if it became known that our talc 18 formulations contained any significant amount of 19 tremolite. Since the usage of these products is 20 so widespread and the existence of pulmonary 21 disease is increasing, it is not inconceivable 22 that we could become involved in litigation in 23 which pulmonary fibrosis or other changes might be 24 rightfully or wrongfully attributed to inhalation 25 of our powder formulations. It might be that</p>

<p>1 someone in the law department should be consulted 2 with regard to the defensibility of our position 3 in the event that such a situation should ever 4 arise." 5 Do you see that? 6 A. "Could ever arise," yes. 7 Q. "Could ever arise." Thank you. 8 So in -- as of April 15, 1969, people in 9 the research and development department, 10 Mr. Ashton in -- at Johnson & Johnson was aware -- 11 anticipating at least the possibility of 12 litigation from tremolite-contaminated talc and 13 allegations of lung disease resulting from that; 14 true? 15 MR. COX: Object to the form of the 16 question. Mischaracterizes the document. 17 THE WITNESS: I'm not in a position to 18 say. I'm not familiar with this document. I'm 19 not -- it's beyond my scope to make any assessment 20 of its content. 21 BY MR. SWANSON: 22 Q. Well, you're the person who's here to talk 23 about legal holds and you're also here to talk 24 about the documents that have been produced in 25 this case and whether or not these are authentic</p>	<p>Page 461</p> <p>1 question. 2 THE WITNESS: I -- I'm not familiar with 3 the content. I'm not able to speak to what the 4 content means in any sense of the scientific, 5 factual, or business or medical sense. To the 6 extent that this is an actual Bates number, and I 7 can certainly confirm that, I have no reason to 8 believe that -- nor does the company believe that 9 there are documents that have been produced that 10 are not authentic documents. 11 But in terms of the content, I can't speak 12 to it. 13 Q. I'm not asking -- I'm asking you first 14 whether or not this is an authentic business 15 record of Johnson & Johnson. And you'll agree 16 that it is; true? 17 MR. COX: Object to the form of the 18 question. 19 THE WITNESS: No. The -- the -- the 20 term "business record" is one that I -- I believe 21 entails a legal judgment. And I think the first 22 time you asked me you didn't say the -- I don't 23 believe you said "business." 24 BY MR. SWANSON: 25 Q. Let me ask it differently. It's an</p> <p>Page 463</p>
<p>1 documents. 2 This is an authentic Johnson & Johnson 3 document; correct? 4 A. I can't say one way or the other. 5 Q. Well, what is it about -- this was -- you 6 can see that this is Johnson & Johnson's Bates 7 numbers; correct? 8 A. I frankly -- oh, yes. I do see a Bates 9 number on it. 10 Q. So you know that that was produced by 11 Johnson & Johnson in this case; true? 12 A. I would want to study it further and 13 verify that, but I do see a Bates number on it. 14 Q. All right. Well, you understand you were 15 noticed, you were -- have been produced as the 16 corporate representative to talk about the 17 authenticity -- authenticity of these documents 18 and whether or not they're business records. 19 You understand that; right? 20 A. I understand that was part of my notice, 21 yes. 22 Q. Okay. So what is it about this document 23 that makes you unable to say whether or not that 24 is an authentic Johnson & Johnson business record? 25 MR. COX: Object to the form of the</p>	<p>Page 462</p> <p>1 authentic record of Johnson & Johnson; correct? 2 A. It -- it appears to be a document from the 3 production, and if it is -- if that is the case, 4 then the company has no reason to believe that it 5 is not an authentic document. 6 Q. An authentic document that was created in 7 Johnson & Johnson's regular course of business; 8 true? 9 A. I don't know. 10 MR. SWANSON: Counsel, I want to meet and 11 confer on this because he is designated to speak 12 on these issues and we're talking about, you know, 13 business record in the simplest sense: Is this 14 authentic and is it something created in the 15 regular course of their business. He needs to be 16 able to talk about that. That's one of the 17 noticed topics. 18 MR. COX: I think he is talking about 19 that. I don't think -- 20 MR. SWANSON: Well, he needs to be able 21 to -- he isn't because he's saying, I don't know, 22 I can't say. 23 MR. COX: Well, you're asking compound 24 questions and I think he's trying to answer them 25 the best he can.</p> <p>Page 464</p>

<p>Page 465</p> <p>1 BY MR. SWANSON:</p> <p>2 Q. Was this document, Exhibit 38, created in</p> <p>3 the regular course of Johnson & Johnson's</p> <p>4 business?</p> <p>5 A. I simply don't have the information to</p> <p>6 answer that. It -- the -- based on the fact that</p> <p>7 it appears to be a document produced in this</p> <p>8 litigation, the company does not doubt -- have any</p> <p>9 special reason to question its authenticity, but I</p> <p>10 cannot speak to whether it's -- how it was</p> <p>11 created, whether it was in the ordinary course of</p> <p>12 business, whether it was in any sense of how the</p> <p>13 company chose to create its documents. It is --</p> <p>14 the document population certainly contains many</p> <p>15 records created in the course of business. I'm</p> <p>16 not able to make a judgment as to this particular</p> <p>17 document as to the circumstances by which it was</p> <p>18 created.</p> <p>19 Q. Do you have any reason to believe that any</p> <p>20 documents that are created that were produced in</p> <p>21 this case, in Leavitt or Fong, that are on</p> <p>22 Johnson & Johnson letterhead are not records that</p> <p>23 were created in the regular course of Johnson &</p> <p>24 Johnson's business?</p> <p>25 MR. COX: Object to the form.</p>	<p>Page 467</p> <p>1 here, nor would I be able to make a judgment as to</p> <p>2 whether it's a business record created in the</p> <p>3 course of business and any other categorization of</p> <p>4 it.</p> <p>5 Q. Okay.</p> <p>6 MR. SWANSON: We're going to have to meet</p> <p>7 and confer on that. He's not an adequate witness</p> <p>8 on this issue. These are really simple questions</p> <p>9 and he is tasked with doing that and he's not able</p> <p>10 to do it.</p> <p>11 MR. COX: I disagree. I mean, I think he</p> <p>12 answered your question about authenticity and he</p> <p>13 answered your question about whether it was</p> <p>14 created in -- in connection with Johnson &</p> <p>15 Johnson's business. I think he's appropriately</p> <p>16 making a distinction in terms of the legal import</p> <p>17 of the term "business record," but I think he</p> <p>18 answered the question -- the other two questions</p> <p>19 you asked.</p> <p>20 MR. SWANSON: Well, I left out the</p> <p>21 term "business record" and I started asking if it</p> <p>22 was created in the regular course of their</p> <p>23 business. That's not a highly legal term.</p> <p>24 MR. COX: No. And I think he answered</p> <p>25 that question and said it was.</p>
<p>Page 466</p> <p>1 THE WITNESS: I -- if -- to the extent</p> <p>2 that the regular course of business assumes a</p> <p>3 legal judgment, I'm not able to say one way or the</p> <p>4 other. I can say that amongst the information</p> <p>5 produced where there are records created in the</p> <p>6 course of the company's business operations, I</p> <p>7 cannot speak to the providence, the context, or</p> <p>8 the classification of this particular document.</p> <p>9 BY MR. SWANSON:</p> <p>10 Q. But it was created in Johnson & Johnson's</p> <p>11 business; correct? You just said that.</p> <p>12 A. It was created in such a manner that the</p> <p>13 company has no reason to doubt its authenticity,</p> <p>14 to the extent that it was produced in this -- in</p> <p>15 this litigation.</p> <p>16 Q. As a Johnson & Johnson record; correct?</p> <p>17 A. I don't know what -- what does that mean,</p> <p>18 Johnson & Johnson?</p> <p>19 Q. It means this is a Johnson & Johnson</p> <p>20 letter, correct, sent in their -- in the course of</p> <p>21 their business. This isn't somebody else's</p> <p>22 business; right? This is Johnson & Johnson's</p> <p>23 business we're talking about; right?</p> <p>24 A. I -- I can agree with you that the words</p> <p>25 at the top say "Johnson & Johnson," but I'm not</p>	<p>Page 468</p> <p>1 MR. SWANSON: You're agreeing that it was,</p> <p>2 correct, as counsel for Johnson & Johnson, on this</p> <p>3 document?</p> <p>4 MR. COX: That that was -- that that's a</p> <p>5 Johnson & Johnson -- created in Johnson &</p> <p>6 Johnson's business, yes. Yes.</p> <p>7 MR. SWANSON: Okay.</p> <p>8 BY MR. SWANSON:</p> <p>9 Q. All right. So, with regard to this</p> <p>10 document, is there -- was -- let me ask you this:</p> <p>11 Legal holds can be issued either because a lawsuit</p> <p>12 has been filed, correct, or because a company</p> <p>13 anticipates litigation; correct?</p> <p>14 MR. COX: Object to the form of the</p> <p>15 question to the extent it calls for a legal</p> <p>16 conclusion.</p> <p>17 BY MR. SWANSON:</p> <p>18 Q. Those are two situations in which a legal</p> <p>19 hold could be...</p> <p>20 A. And -- and I would concur, but there's</p> <p>21 many situations where a legal hold could be</p> <p>22 issued, and the law department makes that</p> <p>23 determination as to what to issue and when.</p> <p>24 Q. But the legal holds themselves talk about</p> <p>25 anticipated, and, Johnson & Johnson's</p>

<p style="text-align: right;">Page 469</p> <p>1 documentation that I've seen, and I can't point 2 you to the exact document, mention both litigation 3 and anticipated litigation in terms of when holds 4 are appropriate; correct? 5 A. Well, I've seen language like Johnson & 6 Johnson -- or so and so is party to litigation. 7 That I recall seeing in the notice. 8 Q. But you agree that anticipated litigation 9 is sometimes a trigger for issuing a hold, 10 correct, for a company? 11 A. In the hypotheticals, yes. Absolutely. 12 Q. Do you have any information that Johnson & 13 Johnson issued a legal hold in 1969 in instructing 14 Johnson & Johnson employees not to destroy 15 documents relating to the testing of Johnson's 16 Baby Powder or talc that was used in Johnson's 17 Baby Powder for the presence of asbestos? 18 A. I have no information as to that. 19 Q. Is there anything that you're aware of 20 that prevented anybody at Johnson & Johnson from 21 issuing a hold on testing documents at this time 22 in 1969? 23 A. I have -- I have no information one way or 24 the other. That was not part of my research. 25 (Whereupon, Plaintiff's Exhibit 39 was</p>	<p style="text-align: right;">Page 471</p> <p>1 faith belief that it first became aware of a claim 2 of alleged exposure to asbestos with respect to 3 defendant's talc in connection with Westfall v. 4 Whittaker, Clark & Daniels, et al., Case Number 5 79-0269, in the United States District Court for 6 the District of Rhode Island in which plaintiffs 7 alleged injury was mesothelioma, and plaintiff was 8 represented by Decoff & Grimm of Providence, 9 Rhode Island. Defendant states that the J&J 10 entity Windsor Minerals was voluntarily dismissed 11 from the case." 12 Have you seen this before? 13 A. I've seen the interrogatory responses, 14 yes. 15 Q. So you were aware that Johnson & Johnson, 16 or its operating entity company, Windsor Minerals, 17 was sued in the Westfall case; correct? 18 A. I'm aware of the question and the answer. 19 Q. Okay. Were you aware that -- were you 20 aware that Johnson & Johnson's Windsor Minerals 21 had been sued in the Westfall case? 22 A. I have a general understanding of that. 23 Q. And to your knowledge, when was that? 24 A. I'm not familiar with the precise date. 25 (Whereupon, Plaintiff's Exhibit 40 was</p>
<p style="text-align: right;">Page 470</p> <p>1 marked for identification.) 2 BY MR. SWANSON: 3 Q. Mr. Mittenenthal, I'm handing you Exhibit 4 Number 39. 5 Let your counsel see that for a moment. 6 Do you have Exhibit Number 39 in front of 7 you? 8 A. Yes, I do. 9 Q. And these are Defendant Johnson & Johnson 10 Consumer, Inc.'s September 2018 Amended Responses 11 to Plaintiff's LAOSD Standard Interrogatories in 12 the Fong case; correct? 13 A. I see that, yes. 14 Q. Okay. And if you go to page 21 of this 15 document, Interrogatory Number 36, do you see the 16 question is, "When did you first receive notice 17 that any person including any agent" -- "employee 18 or agent claimed injury as a result of exposure to 19 asbestos or asbestos-containing product supplied 20 by you?" 21 Do you see that? 22 A. Yes, I do. 23 Q. And then starting at the second sentence 24 of the answer, "After reasonable investigation, 25 defendant states that it has reasonable and good</p>	<p style="text-align: right;">Page 472</p> <p>1 marked for identification.) 2 BY MR. SWANSON: 3 Q. Let me hand you Exhibit Number 40 to your 4 deposition. 5 MR. COX: Do you have an extra copy of 6 that, Mark? 7 Thank you. 8 BY MR. SWANSON: 9 Q. Do you have Exhibit 40 in front of you? 10 A. Yes. 11 Q. Okay. And I've just given you the -- here 12 the first few pages of a transcript of a Roger 13 Miller in the Westfall case. 14 Do you see that? 15 A. Yes. 16 Q. And you see that's the same case number, 17 790269? 18 A. Yes, I do. 19 Q. And what was the date of that deposition? 20 A. October 29, 1982. 21 Q. And if you go to the second page of this 22 on appearances, do you see that Windsor Minerals 23 was represented at the deposition? 24 A. I do. 25 Q. And you know that Windsor Minerals, Inc.</p>

<p>Page 473</p> <p>1 was a subsidiary of Johnson & Johnson that 2 supplied talc to Johnson & Johnson for Johnson's 3 Baby Powder and cosmetic talc products; correct? 4 A. That's my general understanding. 5 Q. And from this information it's clear that 6 Johnson & Johnson was aware of the lawsuit; true? 7 MR. COX: Object to the form of the 8 question. 9 BY MR. SWANSON: 10 Q. From the interrogatory response that I 11 provided you? 12 A. Well, it -- by inference it would appear 13 that the company was aware by virtue of counsel. 14 Q. Okay. Right. 15 And -- okay. Did Johnson & Johnson 16 instruct anyone at Windsor Minerals at that time 17 to preserve or not destroy documents, information, 18 or physical evidence related to talc from Windsor 19 Minerals, Inc. Vermont mines -- 20 MR. COX: Object to form. 21 BY MR. SWANSON: 22 Q. -- or related to products manufactured 23 from talc that came from Windsor Minerals mines? 24 MR. COX: Object to the form of the 25 question.</p>	<p>Page 475</p> <p>1 product. 2 Q. And you got this from the lawyers, right, 3 this understanding? 4 A. Yes. 5 Q. Did you also get an understanding that 6 this came from the same mines where cosmetic talc 7 was being mined? 8 MR. COX: Object to the form. 9 THE WITNESS: That was outside the scope 10 of my investigation. 11 BY MR. SWANSON: 12 Q. I see. So you didn't ask that question or 13 find the answer to that? 14 A. I asked -- I asked -- which question? 15 Q. Whether or not the mines that were 16 involved in -- in the Westfall case issues were 17 the same mines that were producing cosmetic talc 18 for cosmetic talc products for Johnson & Johnson. 19 A. I -- I would not have viewed that as 20 within the scope of my investigation. 21 Q. Speaking on behalf of Johnson & Johnson on 22 the issue of legal holds and preservation of 23 documents, are you aware of any legal hold being 24 issued with respect to the Westfall case? 25 A. I'm -- I'm not aware of holds. I</p>
<p>Page 474</p> <p>1 THE WITNESS: That was outside the scope 2 of my investigation. 3 BY MR. SWANSON: 4 Q. Well, the scope of your investigation was 5 to investigate talc hold issues; correct? 6 MR. COX: Object to the form of the 7 question misstates the scope of the notice for 8 which this witness has been tendered. 9 BY MR. SWANSON: 10 Q. You know from looking at the notice that 11 we asked what efforts were made by Johnson & 12 Johnson to preserve documents, correct -- 13 MR. COX: Object to the form. 14 BY MR. SWANSON: 15 Q. -- as well as samples? 16 MR. COX: Object to the form of the 17 question. Misstates what the notice says. 18 THE WITNESS: My understanding was that 19 the -- my investigation was concerning consumer 20 talc products. 21 BY MR. SWANSON: 22 Q. And what distinction are you making here 23 about Westfall? 24 A. I have a general and limited understanding 25 that Westfall did not involve a consumer talc</p>	<p>Page 476</p> <p>1 requested holds that related to consumer talc. I 2 received those holds. I'm not aware of other 3 holds. 4 Q. Okay. You are aware of the Westfall case? 5 You were made aware of that and you were 6 specifically made aware of the fact that the case 7 allegations itself weren't about a cosmetic talc 8 product; true? 9 A. I have general knowledge of that, yes. 10 Q. But you didn't bother to find out whether 11 or not the talc issues were related to these 12 cases; true? 13 MR. COX: Object to the form. 14 THE WITNESS: I -- looking at the 15 deposition notice and my responsibilities, I did 16 not see that my investigation included 17 understanding where talc came from. I was focused 18 on responding to the deposition topics. 19 BY MR. SWANSON: 20 Q. You would agree with me, though, that if 21 the area where the talc was being mined that's at 22 issue in the Johnson case was an area where 23 cosmetic talc was being mined and in addition it's 24 a mesothelioma case, that there would be many, 25 many overlapping issues with the cosmetic talc</p>

<p style="text-align: right;">Page 477</p> <p>1 case; correct?</p> <p>2 MR. COX: Object to the form.</p> <p>3 THE WITNESS: I know that -- that's a</p> <p>4 legal conclusion. I -- I think I'm being asked to</p> <p>5 provide, and I -- I just can't speak to that.</p> <p>6 BY MR. SWANSON:</p> <p>7 Q. You understand that mesothelioma results</p> <p>8 from inhalation typically; correct?</p> <p>9 MR. COX: Object to the form. Beyond the</p> <p>10 scope of the notice.</p> <p>11 THE WITNESS: I'm not an expert on the</p> <p>12 causes of mesothelioma.</p> <p>13 BY MR. SWANSON:</p> <p>14 Q. In any case, you're not aware of any legal</p> <p>15 hold notice, you've never heard of any legal hold</p> <p>16 notice being issued with respect to any type of</p> <p>17 talc prior to 1999; true?</p> <p>18 A. I am not aware of any notices prior to</p> <p>19 1999.</p> <p>20 (Whereupon, Plaintiff's Exhibit 41 was</p> <p>21 marked for identification.)</p> <p>22 BY MR. SWANSON:</p> <p>23 Q. Handing you Exhibit 41 to your deposition.</p> <p>24 Do you have that in front of you?</p> <p>25 A. I do.</p>	<p style="text-align: right;">Page 479</p> <p>1 plaintiff alleges that they purchased the product.</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And do you see that Number 4, the</p> <p>5 plaintiff alleges talcosis from long-term use of</p> <p>6 Johnson's Baby Powder?</p> <p>7 A. I see it.</p> <p>8 Q. And in Number 5, they are alleging severe</p> <p>9 and permanent injuries from that exposure.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. If you go to the last page, you see</p> <p>13 the date of the complaint?</p> <p>14 A. Yes.</p> <p>15 Q. And what was the date of the complaint?</p> <p>16 A. October 11, 1983.</p> <p>17 Q. And Johnson & Johnson obviously was aware</p> <p>18 of this lawsuit; correct?</p> <p>19 MR. COX: Object to the form.</p> <p>20 THE WITNESS: Well, I have not seen this</p> <p>21 document before and can't speak to it. By -- by</p> <p>22 common sense, it would appear that Johnson &</p> <p>23 Johnson was aware of this.</p> <p>24 BY MR. SWANSON:</p> <p>25 Q. Right. Because this document -- I didn't</p>
<p style="text-align: right;">Page 478</p> <p>1 Q. Have you seen -- now, Exhibit 41, you can</p> <p>2 see that this is a Johnson & Johnson Bates number</p> <p>3 at the bottom; correct?</p> <p>4 A. Yes. I see what appear to be two</p> <p>5 different Bates numbers.</p> <p>6 Q. And you recognize those are Bates numbers</p> <p>7 that Johnson & Johnson uses; you've seen those on</p> <p>8 other documents that they've produced from their</p> <p>9 records; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And this is -- appears to be a complaint</p> <p>12 in a case called Anthony Gambino and Rose Marie</p> <p>13 Gambino, his wife v. Johnson & Johnson Baby</p> <p>14 Products Company; correct?</p> <p>15 A. I see that.</p> <p>16 Q. Were you aware of the Gambino case?</p> <p>17 A. I don't recall it specifically.</p> <p>18 Q. And if you go to the last -- if you go</p> <p>19 to -- well, on the first page, first claim of</p> <p>20 relief, and you can see that the product at issue</p> <p>21 is Johnson's Baby Powder Purest Protection.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And, then, if you go to the second page,</p> <p>25 there is a mention in paragraph 2 that the</p>	<p style="text-align: right;">Page 480</p> <p>1 make this up or even get it off the Court's Web</p> <p>2 site or anything; I got it from Johnson & Johnson</p> <p>3 because that's their Bates number; right?</p> <p>4 A. I see the Bates number, yes.</p> <p>5 Q. And speaking on behalf of Johnson &</p> <p>6 Johnson on the issue of legal holds and</p> <p>7 preservation of documents and evidence, you are</p> <p>8 not aware of any legal hold being issued at the</p> <p>9 time of this Gambino case with respect to talc</p> <p>10 litigation issues and Johnson's Baby Powder; true?</p> <p>11 MR. COX: Object to the form.</p> <p>12 THE WITNESS: I have no information as to</p> <p>13 whether a hold was issued or not issued or what</p> <p>14 the circumstances were.</p> <p>15 BY MR. SWANSON:</p> <p>16 Q. Now, the reality is you're not aware of</p> <p>17 any legal hold being issued in any kind of talc</p> <p>18 litigation case prior to 1999. So, as the</p> <p>19 spokesperson for Johnson & Johnson, Johnson &</p> <p>20 Johnson did not issue a legal hold in response to</p> <p>21 this complaint; correct?</p> <p>22 MR. COX: Object to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: I'm sorry, are you asking me</p> <p>25 to -- to verify that statement or are you asking</p>

<p>Page 481</p> <p>1 me if I know it?</p> <p>2 BY MR. SWANSON:</p> <p>3 Q. I'm asking you to verify that.</p> <p>4 A. I don't --</p> <p>5 MR. COX: Object to the form.</p> <p>6 THE WITNESS: I'm sorry.</p> <p>7 I am not aware of holds prior to 1999, but</p> <p>8 I'm not speaking as to whether there were or were</p> <p>9 not holds issued.</p> <p>10 BY MR. SWANSON:</p> <p>11 Q. Well, sure you are. You are the</p> <p>12 representative. You are Johnson & Johnson sitting</p> <p>13 here speaking as Johnson & Johnson today, and I'm</p> <p>14 asking you about legal holds, and it's a noticed</p> <p>15 topic.</p> <p>16 So did Johnson & Johnson issue a legal</p> <p>17 hold as a result of the Gambino case --</p> <p>18 MR. COX: Object to the form of the</p> <p>19 question.</p> <p>20 BY MR. SWANSON:</p> <p>21 Q. -- in 1983?</p> <p>22 MR. COX: Same objection.</p> <p>23 THE WITNESS: That was -- that was not</p> <p>24 part of my investigation. I don't have that</p> <p>25 information.</p>	<p>Page 483</p> <p>1 MR. SWANSON: Whoever's on the phone, one</p> <p>2 of you, please mute your phone.</p> <p>3 MR. BERNARDO: This is Rich. Mine has</p> <p>4 been on mute.</p> <p>5 MR. SWANSON: Okay.</p> <p>6 This is a Fong privilege log.</p> <p>7 (Whereupon, Plaintiff's Exhibit 42 was</p> <p>8 marked for identification.)</p> <p>9 BY MR. SWANSON:</p> <p>10 Q. Do you have Exhibit 42 in front of you?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And you can see that this is a privilege</p> <p>13 log that was produced by Johnson & Johnson in the</p> <p>14 Fong case; correct?</p> <p>15 A. Appears to be, yes.</p> <p>16 Q. Have you seen this privilege log before?</p> <p>17 A. I have not.</p> <p>18 Q. So you didn't have anything to do with</p> <p>19 making it a privilege log; correct?</p> <p>20 A. That's correct.</p> <p>21 Q. Now I want to go through some -- you</p> <p>22 understand what the general purpose of a privilege</p> <p>23 log is; correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. If you go to page 2 of this -- and</p>
<p>Page 482</p> <p>1 BY MR. SWANSON:</p> <p>2 Q. So the answer is you don't know, it was</p> <p>3 your assignment, so there's two options: Either</p> <p>4 you don't know -- you did your investigation and</p> <p>5 there wasn't one, or it hasn't been produced or</p> <p>6 it's been destroyed or they never issued one.</p> <p>7 Are there any other options I'm not</p> <p>8 thinking of?</p> <p>9 MR. COX: Object to the form.</p> <p>10 THE WITNESS: My objective was to identify</p> <p>11 the holds that were available. As far as the</p> <p>12 holds that weren't available, if there were any,</p> <p>13 I -- I can't speak to the absence of something as</p> <p>14 to why it was or wasn't there. I don't know one</p> <p>15 way or the other if there was a hold issued or</p> <p>16 not. I simply asked for the holds that were</p> <p>17 available.</p> <p>18 BY MR. SWANSON:</p> <p>19 Q. As Johnson & Johnson speaking today here,</p> <p>20 do you have any evidence of a hold as a result of</p> <p>21 the Gambino case in 1983?</p> <p>22 A. I do -- I have not received a hold</p> <p>23 associated with that case.</p> <p>24 Q. Okay. That's all I have about that. Put</p> <p>25 that in the stack.</p>	<p>Page 484</p> <p>1 I know the writing is small, but I -- you're</p> <p>2 pretty young and I assume you can read it.</p> <p>3 A. Okay.</p> <p>4 Q. Page 2. Tell me when you're there.</p> <p>5 A. I'm on page 2.</p> <p>6 Q. You see on page 2 it lists the document.</p> <p>7 There's various columns for this, and you can see</p> <p>8 there's -- including privilege log number, the</p> <p>9 Bates number, the date of the document, the</p> <p>10 author, the recipient, people who were copied,</p> <p>11 very -- sometimes a little bit of information</p> <p>12 about subject matter but not so much, and a</p> <p>13 privilege description and a privilege claim;</p> <p>14 correct?</p> <p>15 MR. COX: Object to the form.</p> <p>16 THE WITNESS: Yeah. I see those are the</p> <p>17 column headings on page 1.</p> <p>18 BY MR. SWANSON:</p> <p>19 Q. Okay. And if you go to page 2, you see</p> <p>20 the third one down, there's a document that --</p> <p>21 about which Johnson & Johnson's claiming privilege</p> <p>22 dated 7/22/1981 from William Ashton to Frank</p> <p>23 Bolden.</p> <p>24 Do you see that entry?</p> <p>25 A. Yes, I do.</p>

<p style="text-align: right;">Page 485</p> <p>1 Q. If you just go to the right there, you see 2 it says, "Memorandum prepared at the request of 3 counsel pursuant to pending and anticipated talc 4 litigation." 5 Do you see that? 6 A. Yes, I do. 7 Q. I don't know what pending talc litigation 8 they're referring to. 9 Do you know if any legal holds were issued 10 with respect to the pending talc litigation that's 11 being referred to in that item from 1981? 12 MR. COX: Object to the form. 13 THE WITNESS: I don't know and I simply 14 didn't investigate those types of notations from 15 the privilege log. 16 BY MR. SWANSON: 17 Q. Okay. You're not aware of any being 18 privilege log from 1981 related to talc 19 litigation, are you? 20 A. I'm sorry. One more time, please. 21 Q. You're not aware of any talc litigation 22 related legal hold being issued in 1981; correct? 23 A. I'm not aware of one. I did not receive 24 one when I requested. 25 Q. Okay. The next item down, do you see</p>	<p style="text-align: right;">Page 487</p> <p>1 references to communications dated November 30, 2 1982, between a George Lee and an Edward 3 Leibensperger? 4 A. I see that, yes. 5 Q. And date of communication is 11/30/1982; 6 correct? 7 A. Well, the first four -- 8 Q. That's what I am -- 9 A. Yeah. 10 Q. Okay. And it refers to -- the first one 11 says, "Letter from client to counsel providing 12 materials in anticipation of litigation for 13 counsel to provide legal advice regarding talc 14 sample evidence." 15 Do you see that? 16 A. Yes. 17 Q. And then the next one says, "Attachment 18 between counsel and client sent at counsel's 19 request seeking legal advice regarding ongoing 20 talc litigation." 21 Do you see that? 22 A. I do. 23 Q. So, as of November 30, 1982, whatever case 24 they're referring to these issues in, or 25 anticipated cases, was any legal hold issued by</p>
<p style="text-align: right;">Page 486</p> <p>1 there's an entry for May 5, 1989? 2 A. Yes. 3 Q. And there's some kind of communication 4 between Ira Dembro and William Ashton. 5 Do you see that? 6 A. I do. 7 Q. And, again, this indicates there's a 8 memorandum prepared by counsel pursuant to pending 9 and anticipated litigation prepared by counsel 10 pursuant to pending and anticipated talc 11 litigation; correct? 12 A. I see that, yes. 13 Q. Are you aware of any legal holds with 14 respect to pending talc litigations being issued 15 by Johnson & Johnson or one of its -- Johnson & 16 Johnson broadly speaking, in 1989 as a result of 17 whatever pending litigation is being referred to 18 there? 19 MR. COX: Object to the form. 20 THE WITNESS: I'm not aware. 21 BY MR. SWANSON: 22 Q. Okay. Going to Page Number 4. Tell me 23 when you're there. 24 A. Yes. 25 Q. Do you see at the top there are multiple</p>	<p style="text-align: right;">Page 488</p> <p>1 Johnson & Johnson? 2 MR. COX: Object to the form. 3 BY MR. SWANSON: 4 Q. For talc litigation-related information 5 and documents? 6 MR. COX: Same objection. 7 THE WITNESS: I -- I simply don't have 8 that information. I didn't view it as my scope to 9 investigate these -- these privilege log 10 notations. 11 BY MR. SWANSON: 12 Q. Well, you understood that we were asking 13 you about Johnson & Johnson's attempt to preserve 14 evidence related to talc issues; correct? 15 MR. COX: Object to the form. 16 THE WITNESS: Yes. With respect to the 17 Fong and Leavitt cases. 18 BY MR. SWANSON: 19 Q. Okay. But you just didn't look at this 20 thing. 21 But you asked for holds; right? 22 A. Yes, I did. 23 Q. Okay. And from what you saw, you're not 24 aware of any holds before 1999; true? 25 A. That's true.</p>

<p style="text-align: right;">Page 489</p> <p>1 Q. And if you go down further at the bottom 2 of the page, you see the reference to June 22, 3 1983? 4 A. Yes. 5 Q. You see again there's another 6 communication and this one between 7 Mr. Leibensperger and a John Beidler? 8 A. Yes. 9 Q. And copied is Roger Miller. You see that? 10 A. Yes. 11 Q. And this also refers to pending and 12 anticipated talc litigation; correct? 13 A. Yes. Correct. 14 Q. Okay. So as of 1983 you're not aware of 15 any talc litigation legal holds being issued by 16 Johnson & Johnson; true? 17 MR. COX: Object to the form. 18 THE WITNESS: That's correct. 19 BY MR. SWANSON: 20 Q. Was there anything that prevented 21 Johnson & Johnson from issuing holds as to any of 22 these cases that we've talked about so far? The 23 Gambino case, the Westfall case, or any of these 24 cases that are referred to in this privilege log? 25 MR. COX: Object to the form.</p>	<p style="text-align: right;">Page 491</p> <p>1 Are you there? 2 A. Yes. 3 Q. So if you see the second reference down, 4 you see there was a communication from Roger N. 5 Miller to a Frank Bolden and other individuals? 6 A. I do. 7 Q. And the date of this communication was 8 November 7, 1977. 9 Do you see that? 10 A. Yes. 11 Q. And the privilege description says, 12 "Attachment prepared at the request of counsel 13 pursuant to pending and anticipated litigation 14 regarding talc litigation." 15 Did I read that right? 16 A. Sounds right. 17 Q. Okay. And was any legal hold issued with 18 respect to that case that you're aware of? 19 A. I'm not aware. 20 Q. Was there anything that prevented 21 Johnson & Johnson from issuing a legal hold as to 22 that talc litigation that you can think of? 23 MR. COX: Object to the form. 24 THE WITNESS: I don't know the 25 circumstances of the case. I don't know</p>
<p style="text-align: right;">Page 490</p> <p>1 THE WITNESS: So I would disagree that the 2 absence of a hold means that a hold wasn't issued. 3 I requested the holds that were available in 4 consumer talc. As to whether holds were issued in 5 these cases or the other circumstances surrounding 6 the discovery process, I can't say one way or the 7 other. I can't say that there wasn't a hold 8 issued. I simply don't know. 9 BY MR. SWANSON: 10 Q. So as Johnson & Johnson, you don't know if 11 there were holds on these issues; correct? 12 A. That's correct. 13 Q. Okay. And are you -- and that does 14 suggest an issue I need to follow up on. 15 Are you saying that legal holds don't get 16 retained by Johnson & Johnson? 17 MR. COX: Object to the form. 18 THE WITNESS: I -- I'm not saying that one 19 way or the other. 20 BY MR. SWANSON: 21 Q. Are you aware of the destruction of legal 22 holds by Johnson & Johnson? 23 A. I am not. 24 Q. Okay. If you could go to page 25 of this 25 privilege log, please.</p>	<p style="text-align: right;">Page 492</p> <p>1 whether -- what holds were issued. I don't know 2 the circumstances of the case. 3 BY MR. SWANSON: 4 Q. Now, you said that you were -- only 5 prepared hold issues related to the Fong and 6 Leavitt case or something along those lines; 7 correct? 8 A. Well, I understood that my general charge 9 was in reference to these two cases. 10 Q. Right. But you understand we're looking 11 here at a privilege log from the Fong case; 12 correct? 13 A. I understand that. 14 Q. So Johnson & Johnson already made the 15 determination that it was required to give us a 16 privilege log on documents that were related to 17 these cases; correct? 18 A. When you say "these cases," you mean -- 19 Q. Fong and Leavitt. This was issued in 20 Fong. You see that, right? 21 A. Yes. I just didn't know what "these" was 22 referring to. 23 Q. Okay. But that's a true statement; right? 24 A. Yes. 25 Q. Okay. The third item down you see there</p>

<p style="text-align: right;">Page 493</p> <p>1 was a communication from a Frank Bolden to Roger 2 Miller December 6, 1978? 3 A. Yes. 4 Q. And, again, it says, "Attachment between 5 counsel and client providing legal advice prepared 6 by counsel pursuant to pending and anticipated 7 litigation regarding talc litigation." 8 Did I read that right? 9 A. Yes. 10 Q. Okay. And with respect to that talc 11 litigation that's referring to, do you have any 12 information that a legal hold was issued? 13 A. I -- I don't know one way or the other. 14 Q. And, again, because you're saying "one way 15 or the other," you understand that you were to 16 talk about legal holds on behalf of Johnson & 17 Johnson; correct? 18 A. Yes. 19 Q. And you made an inquiry about that to 20 Johnson & Johnson; correct? 21 A. Yes. 22 Q. And they provided legal holds to you that 23 go back to 1999; true? 24 A. Yes. 25 Q. And those are the same legal holds they</p>	<p style="text-align: right;">Page 495</p> <p>1 correction. This was not Exhibit 47. Exhibit 43 2 to your deposition. 3 A. Thank you. 4 Q. You have Exhibit 43 in front of you? 5 A. I do. 6 Q. And that is correspondence on Johnson & 7 Johnson letterhead; correct? 8 A. Appears to be, yes. 9 Q. And from an R. Denton to a W. Ashton and 10 to a D. Jones; correct? 11 A. I haven't seen this document before, but I 12 agree with you those are the words in the "to" and 13 "from." 14 Q. And the date it's dated is November 23, 15 1993; correct? 16 A. Yes. 17 Q. And it says, "Subject: Trip report, talc 18 validation team meeting November 16, 1993, 19 Windsor, Vermont." Correct? 20 A. Yes. I see that. 21 Q. Okay. And I'm not going to read through 22 this whole document. But I want to skip -- first 23 of all, again, you're aware that Windsor Minerals 24 was a subsidiary of Johnson & Johnson that mined 25 talc that was used in Johnson & Johnson's baby</p>
<p style="text-align: right;">Page 494</p> <p>1 provided to us in this case; correct? 2 A. Yes. 3 Q. Okay. And those go back to 1999? 4 A. I believe I've answered that, yes. 5 Q. That's right. Okay. 6 I'm done with that one. Thank you. 7 (Whereupon, Plaintiff's Exhibit 43 was 8 marked for identification.) 9 BY MR. SWANSON: 10 Q. Mr. Mittenenthal, I'm handing you Exhibit 47 11 to your deposition. 12 Do you have that in front of you? 13 A. Yes, I do. 14 Q. Okay. And at the top, you see this is on 15 Johnson & Johnson letterhead? 16 THE REPORTER: You got the wrong number. 17 MR. SWANSON: Oh, I did? 18 THE REPORTER: You're out of order. 19 MR. SWANSON: Okay. Let's start over on 20 that, then. 21 Thank you, Early. 22 Let me redo that. I'm getting ahead of 23 myself. 24 BY MR. SWANSON: 25 Q. I'm handing you Exhibit 43. That's a</p>	<p style="text-align: right;">Page 496</p> <p>1 powder; correct? 2 MR. COX: Object to the form. 3 THE WITNESS: I have a general awareness 4 of that. 5 BY MR. SWANSON: 6 Q. And if you go to Page Number 3 of this 7 letter, you see that there's -- above that they're 8 talking about mine tour highlights. 9 Is the heading there? 10 A. You mean down on the page. 11 Q. Yeah. That's right. Two-thirds of the 12 way down the page. 13 A. Yes. 14 Q. And then in the last paragraph, there's a 15 note. 16 Do you see that? 17 A. Yes. 18 Q. And the note says -- well, you go ahead 19 and read that note, please. 20 What does the note say? 21 A. "Note: The specifics of the mining 22 operation at Hammondsville are uncertain as most 23 of the pre-Luzenac records were destroyed by the 24 mine management staff just prior to the J&J 25 divestiture and the Cyprus purchase. However,</p>

<p>Page 497</p> <p>1 several former Hammondsville miners are still 2 employed at the Ham mine, and they provided us 3 with useful information as to the nature of the 4 underground works." 5 Q. Now, you're aware from your research that 6 Windsor Minerals did testing of talc; true? 7 A. I recall that I have some notes to that 8 effect. 9 Q. And you're also aware that Hammondsville 10 was one of the main mines where the talc for 11 Johnson & Johnson's baby powder was mined; 12 correct? 13 MR. COX: Object to the form of the 14 question. 15 THE WITNESS: I don't know the specific 16 names of the mines. 17 BY MR. SWANSON: 18 Q. Okay. And do you know -- did you do any 19 research -- had you been aware of this destruction 20 of records from your research? 21 MR. COX: Object to the form. 22 THE WITNESS: I'm generally aware that 23 records are destroyed from time to time in 24 accordance with retention practices. 25 BY MR. SWANSON:</p>	<p>Page 499</p> <p>1 be in this document which I'm just seeing. 2 BY MR. SWANSON: 3 Q. And from your research on legal holds, 4 you're not aware of any legal holds being in place 5 at that time in 1989; correct? 6 MR. COX: Object to the form. 7 THE WITNESS: I'm not aware any. 8 BY MR. SWANSON: 9 Q. And the reason why there was no legal hold 10 in place at that time is because Johnson & Johnson 11 chose not to issue legal holds with respect to its 12 talc litigation up to that point; true? 13 MR. COX: Object to the form. 14 Mischaracterizes the earlier testimony. 15 THE WITNESS: I would disagree on two 16 points. Number one, I'm not -- I believe I made 17 it clear, I don't know if holds were issued or 18 not, and I'm also aware that historic cases may be 19 dispositions settled, litigated, come to their 20 conclusion. I -- I'm not aware of relevant holds 21 that would be in effect prior to 1999. 22 BY MR. SWANSON: 23 Q. And if there had been a hold in place for 24 testing records and mining records prior to 1989 25 when these records were destroyed, they would have</p>
<p>Page 498</p> <p>1 Q. Okay. That wasn't the question. I 2 specifically -- I understand that you say you 3 hadn't seen this document before, but were you 4 aware from your research that at the time of the 5 J&J divestiture in the Cyprus purchase or prior to 6 that, which was 1989, for the record, there 7 were -- that the most of the records were 8 destroyed by the mine management staff? 9 MR. COX: Object to the form. 10 THE WITNESS: Well, I can read this 11 document on first impression that it refers to 12 pre-Luzenac records being destroyed by mine 13 management. I did not investigate that issue. I 14 don't know the circumstances of the destruction 15 and under what business circumstances it was -- it 16 was conducted. 17 BY MR. SWANSON: 18 Q. Okay. Do you know of all the testing 19 records that have been there up until that point 20 had been destroyed as of 1989 that were in the 21 possession of the mine? 22 MR. COX: Object to the form. 23 THE WITNESS: Yeah. I have general notes 24 as we've gone through on testing records. I 25 cannot speak to any specific instances that would</p>	<p>Page 500</p> <p>1 been preserved and retained at that point; 2 correct? 3 MR. COX: Object to the form. 4 THE WITNESS: I mean, that -- that -- that 5 calls for some degree of speculation. I -- the 6 records you're speaking about I can't speak to 7 there what happened to them. I know that what it 8 says on the page here as you've had me read it, 9 but I have not investigated the circumstances of 10 this particular matter. 11 BY MR. SWANSON: 12 Q. You're not aware -- I mean, you keep 13 raising the specter that you just aren't aware of 14 any holds as if there could have been some holds 15 from before. But you've told us that you're 16 not -- you're not aware of any holds being 17 destroyed by Johnson & Johnson; correct? 18 A. I'm not aware of any, no. 19 Q. That's right. And you're not aware of any 20 hold releases being issued on talc litigation 21 holds; correct? 22 A. Correct. 23 MR. SWANSON: That's all I have about 24 that. Thank you. 25 MR. COX: Want to take a five-minute break</p>

<p style="text-align: right;">Page 501</p> <p>1 now, Mark?</p> <p>2 MR. SWANSON: Sure. Yeah.</p> <p>3 MR. COX: Okay.</p> <p>4 THE VIDEOGRAPHER: This marks the end of</p> <p>5 Media Number 1 in Volume III of the deposition of</p> <p>6 James Mittenenthal.</p> <p>7 Off the record at 10:07 a.m.</p> <p>8 (Recess taken.)</p> <p>9 THE VIDEOGRAPHER: On the record at</p> <p>10 10:20 a.m. This marks the start of Media Number</p> <p>11 2, Volume III in the deposition of James</p> <p>12 Mittenenthal.</p> <p>13 You may proceed, Counsel.</p> <p>14 (Whereupon, Plaintiff's Exhibit 44 was</p> <p>15 marked for identification.)</p> <p>16 BY MR. SWANSON:</p> <p>17 Q. Mr. Mittenenthal, I'm going to hand you --</p> <p>18 I'm handing your counsel first. Oh, actually, I</p> <p>19 have a separate copy there -- Exhibit 44 to your</p> <p>20 deposition.</p> <p>21 Do you have that in front of you?</p> <p>22 A. I do.</p> <p>23 Q. And you've seen this letter before,</p> <p>24 correct, been shown it in a deposition?</p> <p>25 A. I may have. I don't recall.</p>	<p style="text-align: right;">Page 503</p> <p>1 Q. Okay. You see that in the second sentence</p> <p>2 here. Second paragraph, second sentence says, "We</p> <p>3 did not begin to produce roofing-grade products</p> <p>4 from our local mines until 1970s. These mines are</p> <p>5 Clifton, Frostbite, Argonaut, Rainbow, and the</p> <p>6 Hammondsville mine."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. And then you go to the second page. You</p> <p>10 see the first actual paragraph there starting</p> <p>11 with, "Testing was done on a monthly basis on the</p> <p>12 ore bodies we were mining"?</p> <p>13 A. Yes.</p> <p>14 Q. "Composites for the talc used for</p> <p>15 industrial as well as cosmetics were sent to</p> <p>16 McCrone Associates, an independent lab, for</p> <p>17 asbestiform analysis."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. Now, I don't have the complaint in front</p> <p>21 of me, but are you aware of any legal holds being</p> <p>22 issued by Johnson & Johnson with respect to the</p> <p>23 Ritter case?</p> <p>24 A. I'm not aware one way or the other.</p> <p>25 MR. SWANSON: That's all I have about that</p>
<p style="text-align: right;">Page 502</p> <p>1 Q. You see that this appears to be</p> <p>2 correspondence from Luzenac America to Johnson &</p> <p>3 Johnson dated October 17, 1994?</p> <p>4 A. Yes.</p> <p>5 Q. And do you recognize the name of the</p> <p>6 recipient, Mr. O'Shaughnessy; is that correct?</p> <p>7 A. I don't know how it's pronounced. I see</p> <p>8 that that's the recipient.</p> <p>9 Q. Right. But you've seen his name on legal</p> <p>10 holds, correct, John O'Shaughnessy for Johnson &</p> <p>11 Johnson?</p> <p>12 A. I've seen his name before.</p> <p>13 Q. And it says, "Dear Mr. O'Shaughnessy, the</p> <p>14 following is in reply to your letter dated</p> <p>15 October 4, 1994, in reference to Ritter v. Cyprus,</p> <p>16 et al."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And the Ritter case was a case in which</p> <p>20 Johnson & Johnson, or Cyprus, or Windsor Minerals</p> <p>21 was a defendant, correct? Have you heard of that</p> <p>22 case?</p> <p>23 MR. COX: Object to the form.</p> <p>24 THE WITNESS: I don't recall.</p> <p>25 BY MR. SWANSON:</p>	<p style="text-align: right;">Page 504</p> <p>1 one.</p> <p>2 Thank you.</p> <p>3 (Whereupon, Plaintiff's Exhibit 45 was</p> <p>4 marked for identification.)</p> <p>5 MR. COX: Thanks. I'm handing you.</p> <p>6 BY MR. SWANSON:</p> <p>7 Q. I'm handing you Exhibit Number 45 to your</p> <p>8 deposition.</p> <p>9 Do you have that in front of you?</p> <p>10 A. Yes, I do.</p> <p>11 Q. And do you see that this appears to be a</p> <p>12 discovery response of Johnson & Johnson Consumer</p> <p>13 Products, Inc. to a plaintiff's request for</p> <p>14 admission in a Marlene Selby and Lowell Selby --</p> <p>15 Lowell Wayne Selby v. Johnson & Johnson case?</p> <p>16 A. Yes.</p> <p>17 Q. Okay.</p> <p>18 And if you go to the last page, you see</p> <p>19 that these responses were verified on July 19,</p> <p>20 1994, in San Francisco, California, according to</p> <p>21 the signature?</p> <p>22 A. July 19, 1994.</p> <p>23 Q. And if you go to the second page of these</p> <p>24 responses, do you see where the plaintiffs are</p> <p>25 requesting Johnson & Johnson to admit various</p>

<p style="text-align: right;">Page 505</p> <p>1 things, including that you engage in the 2 production, manufacture, and/or packaging of 3 Johnson's Baby Powder? 4 Do you see that Request Number 1? 5 A. Yes. 6 Q. Okay. And if you look at Request Number 7 2, it says, "You are aware that the plaintiffs 8 requesting that Johnson & Johnson admit that 9 they're aware that the aspiration of Johnson's 10 Baby Powder may lead to bronchoconstriction." 11 Do you see that? 12 A. Yes. 13 Q. And then if you go to the fourth page, you 14 see where the plaintiff is asking Johnson & 15 Johnson to admit that you were aware that the 16 aspiration of Johnson's Baby Powder may lead to 17 fibrosis. 18 Do you see that? 19 A. Yes. 20 Q. Did Johnson & Johnson issue a legal hold 21 notice in the Selby case in 1994, or at any time 22 for the Selby case? 23 A. I'm not aware of whether or not a hold was 24 issued for the Selby case. 25 Q. You have no information that a hold was</p>	<p style="text-align: right;">Page 507</p> <p>1 A. Yes. 2 Q. -- back in 1983? 3 A. Yes. 4 Q. So those are consumer talc holds if there 5 was a hold related to those talc -- let me start 6 over. 7 If there was a hold related to those 8 cases, it would be a cosmetic talc litigation 9 hold; true? 10 A. True. 11 Q. Okay. And you asked for all those; right? 12 A. Yes, I did. 13 Q. And the oldest one you got is 1999? 14 A. Correct. 15 Q. And you're not aware of any hold releases 16 ever being issued by Johnson & Johnson related to 17 cosmetic talc litigation; correct? 18 A. Correct. 19 Q. Or any other talc litigation; true? 20 A. I have not seen any releases. 21 Q. Okay. That's all I have about that. 22 Thank you. 23 I want to ask you a few questions about 24 Johnson & Johnson International, and I probably 25 should have asked some of these in the context of</p>
<p style="text-align: right;">Page 506</p> <p>1 issued; correct? 2 A. One way or the other. 3 Q. When you say "one way or the other," 4 again, you're not aware of any holds being 5 destroyed, correct, by Johnson & Johnson? 6 A. Correct. 7 Q. And you're not ahold -- aware of a hold 8 release ever being issued by Johnson & Johnson 9 related in any way to talc litigation; correct? 10 A. I'm not aware that the -- of releases to 11 the holds that I requested. In other words, the 12 1999 through 2017 holds that I requested I am not 13 aware of releases applicable to those holds. 14 Q. Are you aware of releases applicable to 15 other holds related to talc litigation for 16 Johnson & Johnson? 17 A. I requested all holds applicable to 18 cosmetic talc. I -- I don't recall if I requested 19 every release ever issued. 20 Q. Okay. Well, this is clearly cosmetic talc 21 issue, right, the Selby case; true? Johnson's 22 Baby Powder is what they're talking about. 23 A. Yes. 24 Q. And so was the Gambino case. Remember 25 that was a talcosis case --</p>	<p style="text-align: right;">Page 508</p> <p>1 what we were doing yesterday, but I've looked at 2 the holds again in preparation for today, and we 3 went over them in some detail yesterday, and I'd 4 asked you questions about recipients of those 5 legal holds for talc -- in talc litigation going 6 back to 1999. 7 And do you have any information that 8 Johnson & Johnson International ever received any 9 of those holds? 10 A. As an entity? 11 Q. Yes. 12 A. I -- I don't have information with respect 13 to that. I do understand that the 2017 hold was 14 directed at people in international entities. 15 Q. And that was at the first hold that you're 16 aware of that was directed to individuals at 17 Johnson & Johnson International? 18 MR. COX: Object to the form. 19 THE WITNESS: Well, I'm not -- in terms of 20 the precise name of the entity, I would have to 21 double-check those entities. But I -- it's 22 certainly in international locations for over -- 23 overseas or OUS locations. That is the first ones 24 I am aware of. 25 BY MR. SWANSON:</p>

<p>Page 509</p> <p>1 Q. I see. And I should have been clear in my 2 question. My understanding is, Mr. Mittenhal, 3 that there is -- there is an operating company of 4 Johnson & Johnson called "Johnson & Johnson 5 International." 6 Are you aware of that? 7 A. Well, I'm aware that the -- that the names 8 of the entities change over time, and so I just 9 want to make sure I'm using the right terminology 10 that befits the time and place. 11 Q. Let me -- let me ask it a little more 12 precisely. Try to. Are you aware of an entity 13 called "Johnson & Johnson International" that was 14 the recipient as an entity of legal holds? 15 A. I'm not aware. 16 Q. Are you aware of individuals who worked 17 for an entity called -- an entity or division 18 called "Johnson & Johnson International" who 19 received any of the talc litigation legal holds? 20 A. I am aware that in 2017 people in -- that 21 worked for international elements of the 22 organization received litigation holds. 23 Q. When you say "worked for international 24 elements of the organization," are you talking 25 about people who worked domestically or, for</p>	<p>Page 511</p> <p>1 not asking generally about operating units outside 2 the United States like, you know, J&J Hong Kong, 3 J&J Philippines, okay, so just keep -- let's keep 4 that separate. 5 From the research that you've done, can 6 you provide any information about what search -- 7 inquiry search was done for documents that were 8 documents that were kept, produced, retained by 9 Johnson & Johnson International? 10 MR. COX: Object to the form. 11 THE WITNESS: I -- I can't speak to the -- 12 to the entities per se. I know that my notes 13 reflect the fact that there were documents from 14 international operations that were housed in the 15 United States and were searched as part of this 16 effort. 17 BY MR. SWANSON: 18 Q. Okay. And would that be, for example, 19 when we were talking about in the first volume of 20 your deposition about the search that was done 21 through the Philippines documents you had -- there 22 was something in your notes about a hundred boxes 23 being selected and then a Skadden associate going 24 through those boxes and not really finding 25 anything.</p>
<p>Page 510</p> <p>1 example, people in the Philippines like we talked 2 about yesterday? 3 A. The latter. People who were physically 4 located in the Philippines or Hong Kong. 5 Q. Do you have any awareness that the most -- 6 and you're talking about the most recent hold -- 7 the current hold in asbestos cases; correct? 8 A. Yes. 9 Q. Okay. Are you aware of any individuals at 10 a domestic unit of Johnson & Johnson that's called 11 "Johnson & Johnson International" receiving legal 12 holds? 13 A. A domestic unit that's called 14 "International"? 15 Q. Yes. 16 A. I -- I wouldn't know that one way or the 17 other. 18 Q. The way Chris is smiling it might be that 19 I needed to do more research before I asked that 20 question, but. 21 So are you -- did you -- and I don't want 22 to redo what we've done with respect to your notes 23 already, but with -- so keeping in mind that I'm 24 just asking about an operating unit or division 25 called "Johnson & Johnson International," and I'm</p>	<p>Page 512</p> <p>1 Do you remember that generally? 2 A. I do. 3 Q. And is that what you're referring to as a 4 search about an "outside of the U.S." entity but 5 the search is actually physically being done in 6 the United States in an archive in the 7 United States? 8 A. Well, that hundred-box search -- that 9 hundred-box search was actually performed 10 overseas. So I am actually talking about other 11 documents that were related to international 12 operations but the documents themselves were 13 stored in U.S. locations and searched there. 14 Q. I don't know if this will help, but the 15 Johnson & Johnson International entity or 16 operating unit is located in Brunswick, New 17 Jersey. 18 Does that help you at all in terms of 19 whether or not what information that you have 20 about that from your research? 21 A. You know, in my research, I understand 22 that -- and I have a list of company sources that 23 were searched that was -- that was -- you know, 24 we've talked about the archive, the various 25 noncustodial and custodial sources that were</p>

<p>1 listed with my materials. To the extent that they 2 were available to be searched, regardless of 3 whether they were part of an international entity 4 or a U.S. entity, I -- they were all searched, to 5 my understanding. 6 Q. Well -- 7 MR. SWANSON: I'm going to move to strike 8 that. 9 I just -- it's a very particular question. 10 I'm trying to get at. 11 BY MR. SWANSON: 12 Q. Which is what information specifically do 13 you have about the operating unit, Johnson & 14 Johnson International, which is in New Brunswick, 15 New Jersey, searches being done of their 16 documents, documents that they retained or 17 archived or had on their computers? And if you 18 have a list of sources that you're referring to 19 that we can refer to -- if it helps you at all, 20 you know, let's look at it. 21 A. Well, I'm certainly going to look at the 22 list of noncustodial sources and see if there's 23 anything specifically mentioned about company 24 entities. 25 Q. For the record, that's a -- Exhibit Number</p>	<p>Page 513</p> <p>1 information in the U.S. relating to international 2 facts or data. 3 So, for instance, the TrackWise system, 4 the SCEPTRE system, other business systems were 5 global in nature so that if I put something into 6 that system in the Philippines or Hong Kong or 7 China, it would have been stored essentially in 8 the -- in the U.S. system. 9 Q. Do you know as of what year that was being 10 stored in those databases, the first year? 11 A. You know, I have a chart that I've 12 assembled that we marked yesterday. From what I 13 know about those various business systems, the 14 objective was not to necessarily understand when a 15 system went global, but there are systems listed 16 there that have international usage. 17 Q. Let me -- let me just try to cut it short 18 because I don't want to... 19 Do any of those systems go back to the 20 1970s? In other words, were any of those systems 21 utilized in the 1970s? 22 A. I have information in my notes that 23 information may have been scanned and brought 24 forward. There were not a lot of electronic 25 systems in the '70s -- there were some -- but that</p> <p>Page 515</p>
<p>1 4 to your deposition; is that right? 2 A. That's right. I just have a general 3 understanding that all documents that would have 4 been available in the U.S. and potentially 5 relevant were subject to search. 6 MR. SWANSON: Again, I'm going to move to 7 strike as nonresponsive. 8 THE WITNESS: You know, I'm looking, for 9 instance, on page 2 of Exhibit 4, contracts from 10 the international contracts database. I'm just 11 seeing an international reference there. I -- 12 I... 13 BY MR. SWANSON: 14 Q. Can you provide any additional information 15 about any search done -- other than your general 16 impression that searches were done of all U.S. 17 sources, do you have any information specifically 18 as it relates to searches done with respect to 19 Johnson & Johnson International, that you 20 associate with Johnson & Johnson International? 21 A. Well, I have in my notes, for instance, 22 that various people who I interviewed in 23 international locations who I presume to be part 24 of an international organization utilized 25 enterprise global systems that would have stored</p>	<p>Page 514</p> <p>1 certain information was carried forward, brought 2 into systems that have been migrated forward in 3 our -- so I would not be surprised if there were 4 systems today that had some information from those 5 earlier times. 6 For instance, I know that there has been 7 some scanning of -- occasional scanning of lab 8 notebooks. So those were in paper form. Those 9 went back many years. Those have now been brought 10 forward, some of them, at least, into electronic 11 systems. 12 Q. I appreciate what you're saying, which is 13 some of the information got transferred forward 14 from a long time ago paper -- paper-type documents 15 from like the 1970s; correct? 16 But would those database systems that 17 you're talking about being in use for Johnson & 18 Johnson -- for domestic Johnson & Johnson's 19 companies keeping track of and having 20 documentation from Johnson & Johnson operating 21 units outside the United States, those are recent 22 platforms, correct, and the -- in terms of 23 preserving those documents; correct? 24 MR. COX: Object to the form. 25 BY MR. SWANSON:</p> <p>Page 516</p>

<p>Page 517</p> <p>1 Q. They don't go back to the 1970s.</p> <p>2 A. Well, certainly many of the systems I</p> <p>3 investigated were in paper form in the '70s, and</p> <p>4 I -- it would be a one-by-one investigation to</p> <p>5 look at complaints, adverse events, the call</p> <p>6 center, the document control systems, the</p> <p>7 archiving system. I mean, each of those has a</p> <p>8 different story as to when it was -- what system</p> <p>9 went live when and what was migrated from a</p> <p>10 previous system where paper filings would. So it</p> <p>11 would be -- it's not a monolithic answer. Each</p> <p>12 system would have an answer as to...</p> <p>13 Q. I understand. But what was -- you</p> <p>14 referred to some current systems. Since I don't</p> <p>15 have a handle on these names when you first</p> <p>16 answered the question, what were those systems you</p> <p>17 referred to?</p> <p>18 A. The first ones I mentioned TrackWise.</p> <p>19 Q. TrackWise. Were any of those in use --</p> <p>20 was TrackWise in use by Johnson & Johnson in the</p> <p>21 1970s or 1980s, 1990s, or even the early 2000s?</p> <p>22 A. I believe TrackWise -- TrackWise went live</p> <p>23 relatively recently in about 2009. Well, ten</p> <p>24 years, nine years ago.</p> <p>25 Q. Okay.</p>	<p>Page 519</p> <p>1 Did you investigate what systems were in</p> <p>2 use at either of those locations, the Philippines</p> <p>3 or Hong Kong in the 1960s or '70s or '80s in terms</p> <p>4 of database systems or the systems for organizing</p> <p>5 and preserving documents?</p> <p>6 A. I did not catalogue the systems in use at</p> <p>7 that time. I understood that what was available</p> <p>8 from the time frame that had been preserved from</p> <p>9 that time was in paper form or in a storage form</p> <p>10 that it could be put in a box and had been stored</p> <p>11 in a facility, and that that's the material that</p> <p>12 was -- that was -- that was searched and that</p> <p>13 there were indexes to that material.</p> <p>14 I don't know that there were any</p> <p>15 electronic systems in use then. I did not</p> <p>16 catalogue that.</p> <p>17 Q. We talked about this a little bit so I</p> <p>18 don't want to spend a lot of time on this, but</p> <p>19 this hundred boxes that got pulled, that was</p> <p>20 pulled based on key words, right, according to</p> <p>21 your notes, for the Philippines?</p> <p>22 A. Yes. And what that indicated was that</p> <p>23 when they did the search and came up with</p> <p>24 nothing -- nothing based on the key word search of</p> <p>25 the index, they retrieved -- it may have been</p>
<p>Page 518</p> <p>1 A. Approximately when -- around the time that</p> <p>2 certain operations were consolidated and a global</p> <p>3 talc specification was created. So there was a</p> <p>4 lot of that activity in that 2009 time frame,</p> <p>5 including, as I recall, the conversion to the</p> <p>6 TrackWise system.</p> <p>7 Q. And what was the system before TrackWise?</p> <p>8 A. I've got to check my notes.</p> <p>9 Q. Okay. I'm going to have you hold that</p> <p>10 thought.</p> <p>11 Let me ask. I think I do want to look at</p> <p>12 your notes for a moment here and ask you about --</p> <p>13 a little bit more about the Philippines.</p> <p>14 Do you have your paginated notes? It's</p> <p>15 Exhibit 26 and I think for the most part, those</p> <p>16 are -- actually, it would be over there, I</p> <p>17 believe, wouldn't it?</p> <p>18 If you go to page 64 in the paginated</p> <p>19 notes, your paginated notes, which is Exhibit 26.</p> <p>20 You see here where it's -- there's a summary of</p> <p>21 your discussions with, was it Pamela Downs? Let's</p> <p>22 see, yes.</p> <p>23 A. Yes.</p> <p>24 Q. Pam Downs regarding searches in overseas</p> <p>25 location including the Philippines, Hong Kong.</p>	<p>Page 520</p> <p>1 101 boxes -- it was approximately a hundred</p> <p>2 boxes -- to go through to confirm from a sampling</p> <p>3 standpoint.</p> <p>4 Q. I'm going to cut you off. I just asked</p> <p>5 you a real simple question and you gave me the</p> <p>6 full explanation again. And we talked about it</p> <p>7 last time, so I've just got a couple little pieces</p> <p>8 here to cover.</p> <p>9 A. Okay.</p> <p>10 Q. I don't mean to be rude or anything, but I</p> <p>11 want to move things along and I'm sure you do,</p> <p>12 too.</p> <p>13 Okay. So the key words that were</p> <p>14 searched, were those only in English?</p> <p>15 A. I don't know if the key words were only in</p> <p>16 English. I have an understanding that the -- that</p> <p>17 there was a general use of English for business</p> <p>18 documents and that there were English speakers</p> <p>19 there in the records staff who would have known if</p> <p>20 there were other foreign language issues. I don't</p> <p>21 know if there were other key words added in any</p> <p>22 other languages.</p> <p>23 Q. Well, were the key words the same word --</p> <p>24 these are different key words from the ERMS key</p> <p>25 words or the E-R-M-S key words that we spoke about</p>

<p>Page 521</p> <p>1 last time that are in Exhibit 6 to your 2 deposition? 3 A. You know, I think the terms may have been 4 the same, but because it was a different system -- 5 it was an index, it may have been an Excel index 6 or some other different format than ERMS -- and 7 therefore, the precise way it was searched may 8 have varied. I understand that the intent was to 9 search the same type of information. 10 Q. Okay. But you don't know if there were -- 11 whether or not there were any non-English words 12 that were used; correct? 13 A. That's correct. 14 Q. Did you -- has this been produced to us, 15 this index of key words? 16 MR. COX: Object to the form. 17 THE WITNESS: I'm not aware one way or the 18 other. 19 BY MR. SWANSON: 20 Q. You didn't produce it for your deposition; 21 true? 22 A. Correct. 23 Q. Now, these boxes that were selected, a 24 hundred boxes, out of how many boxes were those 25 selected?</p>	<p>Page 523</p> <p>1 A. Can you reference me to where we are? 2 Q. "Found none. No" -- "no boxes needed" -- 3 it says, "No boxes needed to be opened." What was 4 that -- that was based on what? 5 A. The searching of the index. 6 Q. Okay. And what -- and I apologize if I 7 asked this. Was -- were the searches in the Hong 8 Kong documents only done in English, as far as you 9 know? 10 A. I -- I don't know. I do know that there 11 was a committee of people involved with the 12 search, and that committee would list people who 13 would be aware of what documents would be in 14 English and in other languages, and the search 15 would have been calibrated accordingly. 16 MR. SWANSON: Move to strike as 17 nonresponsive. 18 BY MR. SWANSON: 19 Q. Would you agree that if the search terms 20 were English only, then English documents -- 21 documents in English would be more likely to come 22 up; right? 23 A. I -- I'm not sure I would say that because 24 you have the index and you have the body of the 25 documents, and the index terms could be in</p>
<p>Page 522</p> <p>1 A. I -- I don't know the total box count in 2 all these facilities. 3 Q. That was not a random sampling; correct? 4 A. It was -- it was chosen by the attorneys. 5 The methodology I'm not -- I'm not aware of. 6 Q. And is it true that any documents based on 7 the search -- well, whatever documents there were 8 there still -- strike that. 9 With respect to the Hong Kong search, 10 again, it says there was "inbox site index." 11 Has that been produced? 12 A. I'm not aware of one way or the other. 13 Q. Okay. "Put together committee as per 14 above." 15 What does that mean? 16 A. So, there were a list of people associated 17 with the search, and those are actually listed in 18 the later document, because these searches were 19 prior -- prior to the specific Fong and Leavitt 20 searches. 21 So my recent exhibit list additional 22 efforts and list out those people. 23 Q. Okay. And we can pull that up if we need 24 to, but let me -- let me ask you: It says that no 25 responsive documents were found; correct?</p>	<p>Page 524</p> <p>1 English, the document could be in another 2 language. I don't have the particulars on how the 3 index was -- was developed. I have an 4 understanding that the business language in use 5 would have been English, but I don't know the 6 nature of how the boxes were described and which 7 languages were used. 8 Q. And when you say you have an understanding 9 the business language being used, you mean 10 English? 11 A. Yes. 12 Q. For business? 13 A. Yes. 14 Q. Is that what you're saying? 15 A. English was commonly used in the business, 16 yes. 17 Q. So Johnson & Johnson -- and I think you 18 referred to that in the Philippines, too; correct? 19 A. Yes. 20 Q. So Johnson & Johnson's operating 21 companies -- in Philippines, in Hong Kong, 22 Johnson & Johnson was using English in those for 23 the most part; is that what you're saying? 24 A. I would say that English was widely used. 25 I don't -- I can't speak to the ratios or the</p>

<p style="text-align: right;">Page 525</p> <p>1 official adoption.</p> <p>2 Q. Okay. Right. So but would you agree that</p> <p>3 manufacturers and suppliers to Johnson & Johnson</p> <p>4 in those foreign countries might not be using</p> <p>5 English?</p> <p>6 A. I wouldn't want to speculate on how they</p> <p>7 communicated.</p> <p>8 Q. Now, with respect to your subsequent</p> <p>9 discussion with Pam Downs and Laura -- I --</p> <p>10 Giacino, or whatever her name was, did you learn</p> <p>11 anything more in terms of whether or not any</p> <p>12 documents were actually located at the Hong Kong</p> <p>13 location?</p> <p>14 A. Well, I can make a blanket statement that</p> <p>15 what I did learn was in my notes and I --</p> <p>16 Q. Well, let's go to your notes, then, and</p> <p>17 let's pull that -- I don't remember what exhibit</p> <p>18 that is offhand, but I believe --</p> <p>19 A. It's right on top here, actually.</p> <p>20 Q. Oh, it is.</p> <p>21 A. 20.</p> <p>22 Q. Okay. Great. And let's -- since we've</p> <p>23 got this in front of us, it looks like that's on</p> <p>24 the bottom of page 2 there's a reference to Hong</p> <p>25 Kong; correct?</p>	<p style="text-align: right;">Page 527</p> <p>1 actually --</p> <p>2 Q. Do you know what their instructions or</p> <p>3 training was in terms of what they were looking</p> <p>4 for, the people who actually looked at the offsite</p> <p>5 storage indexes or any electronic listings?</p> <p>6 A. Well, I don't know about their training.</p> <p>7 I know that they -- they were looking for the</p> <p>8 items detailed in the search criteria.</p> <p>9 Q. And what was the year limit put on the</p> <p>10 search?</p> <p>11 A. I don't know that they had a year limit.</p> <p>12 I know that they were aware of the time frame, as</p> <p>13 I recall, from 1970 to '84 -- or '71 -- '70 to</p> <p>14 '84.</p> <p>15 Q. That's all I've got about that one.</p> <p>16 Although you probably hold on to that one because</p> <p>17 you may look at it again in a moment.</p> <p>18 Do you know, with respect to the Korean</p> <p>19 talc that was being supplied to Johnson & Johnson</p> <p>20 Hong Kong and Johnson & Johnson Philippines,</p> <p>21 whether or not any searches for documents related</p> <p>22 to that talc supply in either Leavitt or Fong</p> <p>23 cases, or any other cases, for that matter, were</p> <p>24 done in English, and what languages they were done</p> <p>25 in? Let me ask you that way.</p>
<p style="text-align: right;">Page 526</p> <p>1 A. Yeah. That is the first Fong reference.</p> <p>2 Q. Okay. And is it correct that no documents</p> <p>3 were located with respect to Hong Kong?</p> <p>4 A. Yes. So this -- this is in Category 4,</p> <p>5 and if I reference what that means, it says that</p> <p>6 this type of search was a company source that had</p> <p>7 not been searched before. So there were</p> <p>8 certain -- certain searches conducted in new</p> <p>9 areas, new searches, entirely new searches, and</p> <p>10 that was -- that further yielded nothing in that</p> <p>11 time frame.</p> <p>12 Q. Do you know what the terms -- have you</p> <p>13 seen the offsite storage index and any electronic</p> <p>14 listings with respect to Hong Kong?</p> <p>15 A. Have I -- have I seen it?</p> <p>16 Q. Yeah.</p> <p>17 A. No.</p> <p>18 Q. Do you know what -- how detailed it is?</p> <p>19 A. I have not -- I have not seen it.</p> <p>20 Q. Do you know what search -- what search</p> <p>21 terms -- what specific -- do you know the specific</p> <p>22 individuals who did -- who looked at the storage</p> <p>23 indexes, who they were?</p> <p>24 A. No. I know Ms. Downs and attorneys were</p> <p>25 part of the process. I don't know who -- who</p>	<p style="text-align: right;">Page 528</p> <p>1 MR. COX: Object to the form.</p> <p>2 THE WITNESS: I don't know the range of</p> <p>3 languages that were used in the search.</p> <p>4 BY MR. SWANSON:</p> <p>5 Q. Do you know whether or not the talc</p> <p>6 supplier from Korea's talc supply documents are in</p> <p>7 Korean or some other language?</p> <p>8 A. I don't have that information. I did not</p> <p>9 research that.</p> <p>10 Q. And you're aware from your review of the</p> <p>11 discovery and the responses to discovery in the</p> <p>12 Fong and Leavitt cases that the plaintiffs broadly</p> <p>13 asked for results of testing and testing documents</p> <p>14 related to talc that went into Johnson's Baby</p> <p>15 Powder, including from that manufactured overseas;</p> <p>16 correct?</p> <p>17 MR. COX: Object to the form.</p> <p>18 THE WITNESS: I'm generally aware that</p> <p>19 test results were requested.</p> <p>20 BY MR. SWANSON:</p> <p>21 Q. Okay. And we have been provided, and I</p> <p>22 don't know if you're aware of it, some Johnson &</p> <p>23 Johnson worldwide talc surveys from the late 1970s</p> <p>24 and early 1980s.</p> <p>25 Have you seen those documents? And I</p>

<p style="text-align: right;">Page 529</p> <p>1 believe those may have been initially obtained or 2 provided in the De La Cruz case? 3 A. I'm aware of those documents. 4 Q. Other than those documents, are you aware 5 of the existence of any other talc testing-related 6 documents for the testing of Korean talc for 7 asbestos? 8 A. I'm not specifically aware one way or the 9 other. 10 Q. And I believe I asked this yesterday, but 11 you're not aware of a legal hold ever being issued 12 with respect to Korean underlying testing 13 documents, testing of Korean talc; true? 14 MR. COX: Object to the form. 15 THE WITNESS: I'm not aware of a -- of 16 a... 17 Actually, I should rephrase. What I 18 believe I said yesterday was that I'm not aware if 19 there were holds sent to any international 20 locations prior to 2017. 21 BY MR. SWANSON: 22 Q. Fair enough. 23 Are there any MSDS sheets that Johnson & 24 Johnson has for Korean talc? I haven't seen any, 25 but do you know from your research are there MSDS</p>	<p style="text-align: right;">Page 531</p> <p>1 MR. SWANSON: Might as well go ahead and 2 mark it, Exhibit 46 to your deposition. 3 (Whereupon, Plaintiff's Exhibit 46 was 4 marked for identification.) 5 BY MR. SWANSON: 6 Q. Do you have that in front of you? 7 A. Yes, I do. 8 Q. And you see this is defendant Johnson & 9 Johnson's June 26, 2018, Amended Responses to 10 Plaintiff's Request for Production of Documents, 11 Set 3; correct? 12 A. Yes. 13 Q. And if you go to the Request Number 29 -- 14 Request Number 29 and 30, you see that 29 asks for 15 all the results of testing of talc or talc ore 16 that was used for Johnson & Johnson cosmetic talc 17 products from '65 -- 1965 to the present. 18 Do you see that? 19 A. Yes. 20 Q. And Number 30 asked essentially the same 21 question for Johnson & Johnson's talc products, 22 right, testing or testing results of Johnson & 23 Johnson cosmetic talc products 1965 to the 24 present; correct? 25 A. Yes.</p>
<p style="text-align: right;">Page 530</p> <p>1 sheets for Korean talc? 2 A. I mean, I'm just going to quickly tab 3 through the noncustodial sources and see if I see 4 any references to it. I don't recall any 5 references to it. 6 Q. Just for the record, you're looking at 7 Exhibit 4? 8 A. That's right. 9 Yeah. I can't tell from here. I'm not 10 aware of any. 11 Q. Okay. You saw from your review of the 12 discovery that the plaintiffs again asked for -- 13 and we can go through the discovery, but I think 14 you've looked at it, so if we need to, we will -- 15 but that the plaintiffs have asked Johnson & 16 Johnson, in the Leavitt case specifically, for all 17 talc testing results going back to 1965 to the 18 present. 19 Did you see that? 20 A. I'm aware of historical requests for 21 testing. 22 Q. Do you -- are you aware in the Leavitt 23 case those went out pretty far; correct? 24 Let me see if I can pull this out real 25 quickly and show it to you.</p>	<p style="text-align: right;">Page 532</p> <p>1 Q. And you see that Johnson & Johnson has 2 said that it has produced all documents; correct? 3 MR. COX: Object to the form. 4 THE WITNESS: I see that. 5 BY MR. SWANSON: 6 Q. Okay. It says it's identified and 7 produced all documents in its possession, custody, 8 or control. 9 So -- and these are verified; right? If 10 you go to the last page or the second-to-last 11 page, you see the verification; correct? 12 A. Yes. 13 Q. Who verified those? 14 A. Tina French. 15 Q. And you know who Tina French is; correct? 16 A. Yes. 17 Q. And she's empowered by Johnson & Johnson 18 to verify those; correct? 19 A. Yes. 20 Q. And so if -- do you have information with 21 respect to the level of completeness of -- let me 22 see if I can ask this differently. Do you know of 23 all the testing that would -- that was done from 24 1965 to the present that meets that description, 25 how much of those testing results were produced in</p>

<p style="text-align: right;">Page 533</p> <p>1 the Leavitt case?</p> <p>2 MR. COX: Object to the form.</p> <p>3 BY MR. SWANSON:</p> <p>4 Q. And I'm not talking about the documents</p> <p>5 that just exist now but of all the testing that</p> <p>6 was done from '65 to the present, those testing</p> <p>7 results, how many of those have actually been</p> <p>8 produced?</p> <p>9 MR. COX: Objection.</p> <p>10 BY MR. SWANSON:</p> <p>11 Q. What percentage, anything like that.</p> <p>12 MR. COX: Object to the form. Beyond the</p> <p>13 scope of the notice.</p> <p>14 THE WITNESS: I'm not sure how I would</p> <p>15 have -- be able to understand what percentage were</p> <p>16 produced. Certainly the ones were produced that</p> <p>17 were -- the company could find.</p> <p>18 BY MR. SWANSON:</p> <p>19 Q. Right. So you -- right. And that's fine.</p> <p>20 And you can say you don't know. I mean, that's a</p> <p>21 perfectly fine answer in a deposition, as you</p> <p>22 know.</p> <p>23 Okay. But they produced everything they</p> <p>24 had, according to their diligent search, according</p> <p>25 to that answer, right?</p>	<p style="text-align: right;">Page 535</p> <p>1 that it can find to identify it, or review it and</p> <p>2 produce it. I don't know how one would go about</p> <p>3 knowing what percentage of a hypothetical,</p> <p>4 historical population would have -- would have</p> <p>5 been calculated.</p> <p>6 BY MR. SWANSON:</p> <p>7 Q. Okay. So, to the extent that testing</p> <p>8 results have not been produced by Johnson &</p> <p>9 Johnson, that -- where the testing was done and at</p> <p>10 some point there was a testing result, that would</p> <p>11 be the result of destruction of the testing</p> <p>12 results; correct?</p> <p>13 MR. COX: Object to the form.</p> <p>14 THE WITNESS: I don't think that</p> <p>15 inevitably follows a "to be." That could be a --</p> <p>16 that's a potential reason for why something wasn't</p> <p>17 produced if it was a disposition in the course of</p> <p>18 business.</p> <p>19 BY MR. SWANSON:</p> <p>20 Q. Right. Which means it would be -- and if</p> <p>21 those documents -- and we -- I'm not going to go</p> <p>22 back into all the holds and the retention</p> <p>23 schedules, but we talked about this yesterday. If</p> <p>24 something is not under a hold and it's no longer</p> <p>25 under retention by the retention schedule, it's</p>
<p style="text-align: right;">Page 534</p> <p>1 A. Yes.</p> <p>2 Q. Okay. So if any document -- if any</p> <p>3 testing documents are missing that there is reason</p> <p>4 to believe existed, those documents would have</p> <p>5 been destroyed; correct?</p> <p>6 MR. COX: Object to the form.</p> <p>7 THE WITNESS: I -- I didn't understand the</p> <p>8 last question, I'm sorry.</p> <p>9 BY MR. SWANSON:</p> <p>10 Q. Well, hypothetically -- you said they</p> <p>11 produced all the documents in their possession,</p> <p>12 custody, or control. And they said that under</p> <p>13 oath; Johnson & Johnson said that and you've</p> <p>14 verified that.</p> <p>15 My question is, if -- first of all, can</p> <p>16 you say what percentage of the documents</p> <p>17 reflecting all testing results from those periods</p> <p>18 were produced, whether it was more or less than 5</p> <p>19 percent?</p> <p>20 MR. COX: Object to the form.</p> <p>21 THE WITNESS: I'm in no position to --</p> <p>22 based on research or even research that I could</p> <p>23 do, I don't know how I could say what a percentage</p> <p>24 would be. I think the company's methodology, as</p> <p>25 in much discovery, is to look for the information</p>	<p style="text-align: right;">Page 536</p> <p>1 actually supposed to be disposed of; correct?</p> <p>2 MR. COX: Object to the form.</p> <p>3 THE WITNESS: It becomes a candidate for</p> <p>4 destruction.</p> <p>5 BY MR. SWANSON:</p> <p>6 Q. Right. And if, for example, a company</p> <p>7 like Johnson & Johnson has a cleanout policy</p> <p>8 annually that's a mandatory possible -- procedure,</p> <p>9 then, in fact, it would get destroyed; true?</p> <p>10 MR. COX: Object to the form.</p> <p>11 THE WITNESS: To the extent that it was</p> <p>12 agreed upon and signed off on, yes.</p> <p>13 BY MR. SWANSON:</p> <p>14 Q. I'd like to ask you some questions about</p> <p>15 the Legacy collections of documents. And we</p> <p>16 touched on this a little bit in the first volume</p> <p>17 of your deposition. And let me ask you about --</p> <p>18 first of all, are those listed in noncustodial</p> <p>19 sources, I believe? Is that right?</p> <p>20 A. Yes, they are, which is Exhibit 4.</p> <p>21 Q. Okay. And you've got some information in</p> <p>22 your notes about this.</p> <p>23 Did you prepare this document,</p> <p>24 "Noncustodial sources"?</p> <p>25 A. I did not.</p>

<p style="text-align: right;">Page 537</p> <p>1 Q. It was prepared by counsel?</p> <p>2 A. Yes.</p> <p>3 Q. So looking at page 2 of Exhibit 4, it</p> <p>4 lists Legacy 1 and some information about that;</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. And Legacy 1 was a document collection of</p> <p>8 talc-related documents that was put together in --</p> <p>9 as a result or in connection with a 2009 South</p> <p>10 Dakota action, Berg v. Johnson & Johnson; correct?</p> <p>11 A. That's my read of the description, yes.</p> <p>12 Q. And that was a lawsuit alleging ovarian</p> <p>13 cancer as a result of the use of Johnson's Baby</p> <p>14 Powder; correct?</p> <p>15 A. By its description.</p> <p>16 Q. Do you -- do you know -- was a legal hold</p> <p>17 issued in that case? I think actually we may have</p> <p>18 seen -- is this Berg? Yeah, okay. I think we did</p> <p>19 see Berg from 2009. Yeah. Okay.</p> <p>20 So I think I know the answer to that.</p> <p>21 So that was a 2009 hold that we looked; is</p> <p>22 that right?</p> <p>23 A. Yeah. You know, I'm going to actually</p> <p>24 just reach over and grab my list of holds so I've</p> <p>25 got that in front of me.</p>	<p style="text-align: right;">Page 539</p> <p>1 collection were done back in 2009 or '10 or</p> <p>2 whenever that was actually effectuated.</p> <p>3 Do you have information about that?</p> <p>4 A. I -- I don't. I have it represented that</p> <p>5 that was a monolithic collection that was</p> <p>6 preserved and carried forward. I don't have the</p> <p>7 search criteria for -- for that particular matter.</p> <p>8 Q. Do you know how sources of documents were</p> <p>9 identified?</p> <p>10 A. In Legacy 1?</p> <p>11 Q. Yes.</p> <p>12 A. No. As I mentioned, that was presented to</p> <p>13 me as a -- as a monolithic set. I mentioned in</p> <p>14 the first day that I had gone through and reviewed</p> <p>15 certain -- sampled and reviewed certain documents</p> <p>16 in a litigation review tool. I -- I pulled up a</p> <p>17 few Legacy 1 documents just to -- just to see them</p> <p>18 and get familiar with them. I certainly couldn't</p> <p>19 speak to where all -- they all came from.</p> <p>20 Q. And it looks like -- interesting. I'm</p> <p>21 looking at these other Legacy collections and I</p> <p>22 think I'll just jump over to some of these others.</p> <p>23 You see -- do you know why Legacy 4, for</p> <p>24 example, was -- how the numbering for the Legacy</p> <p>25 collections came about? For example, there were</p>
<p style="text-align: right;">Page 538</p> <p>1 Q. Oh, yeah. So what exhibit is that for the</p> <p>2 record?</p> <p>3 A. That is 21.</p> <p>4 Q. Thank you.</p> <p>5 And the Berg case was under a legal hold;</p> <p>6 is that right?</p> <p>7 A. I have a legal hold from December 15th,</p> <p>8 '09.</p> <p>9 Q. And a collection of documents was put</p> <p>10 together at that time?</p> <p>11 A. At some point it was put together.</p> <p>12 Q. Do you know -- do you remember the last</p> <p>13 time we talked about in some detail how the</p> <p>14 various inquiry and search steps related to</p> <p>15 documents that had become part of the sort of -- I</p> <p>16 forget what we're calling it, but the large sort</p> <p>17 of omnibus talc collection of documents, and we</p> <p>18 talked about those procedures with respect to the</p> <p>19 1600 boxes being pulled and the ERMS and the</p> <p>20 filtering terms.</p> <p>21 You remember that?</p> <p>22 A. Yes.</p> <p>23 Q. And what I'd like to ask you is about</p> <p>24 what -- how the searches were done, the inquiry</p> <p>25 and searches related to Legacy -- the Legacy 1</p>	<p style="text-align: right;">Page 540</p> <p>1 some documents, it appears from the description</p> <p>2 here that are part of Legacy 4, that were gathered</p> <p>3 in the Ritter case.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know when those were gathered?</p> <p>7 A. No, I do not.</p> <p>8 Q. It says "primarily collected in connection</p> <p>9 with the Ritter case."</p> <p>10 And then you were aware of the Coker case</p> <p>11 and the collection that came out of that; is that</p> <p>12 right? That's Legacy Number 2?</p> <p>13 A. That's right.</p> <p>14 Q. Does the -- and I know you don't have any</p> <p>15 holds prior to 1999, but does the existence of</p> <p>16 these Legacy collections to you suggest that there</p> <p>17 were legal holds in place?</p> <p>18 MR. COX: Object to the form.</p> <p>19 THE WITNESS: It does not necessarily</p> <p>20 follow that. And I -- as a hypothetical and maybe</p> <p>21 they collected for the purposes of accomplishing a</p> <p>22 hold. I know from -- in some cases that happens.</p> <p>23 I don't know if that's an indication or not of</p> <p>24 whether holds were issued.</p> <p>25 BY MR. SWANSON:</p>

<p>Page 541</p> <p>1 Q. Looking at the Coker, the one that was 2 collect -- the Legacy 2, it says it was a 3 historical collection of materials primarily 4 located in connection with the 1998 Texas action, 5 Coker v. Bill Thames Pharmacy, Inc. et al. 6 Do you see that? 7 A. Yes. 8 Q. And that was a case where a woman had 9 alleged that she developed malignant mesothelioma 10 from airborne exposure to talcum powder, and that 11 would be referring to either Johnson & Johnson 12 Baby Powder or Shower to Shower, right? 13 A. I'd have to double-check, but apparently, 14 yes. 15 Q. Okay. Speaking as to that collection that 16 was gathered as a result of this Coker case that 17 was filed in 1998, do you know what sources of -- 18 do you know -- generally, can you talk about how 19 the collection was created? 20 A. You know, I received a brief overview from 21 counsel and then I was also referred to the letter 22 that is marked as Exhibit 10 to familiarize myself 23 with those materials. 24 Q. Okay. Without me reading this letter in 25 detail right now, based on your understanding</p>	<p>Page 543</p> <p>1 other people. But beyond that, I don't have 2 specific information, nor did I do a discrete 3 investigation of this historical collection that 4 was brought forward. 5 Q. And do you know specifically -- or what 6 information do you have about the -- what was 7 being sought and what indexes -- indices, 8 electronic or paper, were consulted for that? 9 A. I don't have specific information beyond 10 what -- what's in the letter. 11 Q. And do you know who actually did the 12 search? 13 A. My understanding is that it was done under 14 attorney supervision. Beyond that, I can't speak 15 to who physically performed the search. 16 Q. Do you know if the search was done only 17 through paper files or were there electronic 18 searches done? 19 A. I'm reviewing the letter to see if there's 20 any indications. 21 Yeah. It -- it's not clear from the 22 letter what sources were consulted. There are -- 23 there are certainly references to paper documents. 24 I -- I can't ascertain the scope of the search 25 from the letter.</p>
<p>Page 542</p> <p>1 after having read it, do you know what sources 2 were consulted to locate relevant documents that 3 were collected and became Legacy 2? 4 A. Well, I did not personally verify this, 5 but based on my read of the document, on page 2 6 there's a question about the document collection 7 that occurred, and the text in the case that "the 8 collection efforts involved identifying, 9 collecting, and copying the reasonably available 10 documents related to talc from employees 11 identified in the memo," that collection which was 12 referred to as "the '98 collection" contains a 13 list of identified individuals below that. 14 Q. Okay. And you're looking at this list: 15 John Hopkins, Bill Ashton, Regina Gallagher, 16 Connie Seamen, James Molnar, Bob Russell, George 17 Lee, and Bruce Semple? 18 A. Yes. 19 Q. Are you aware of anybody else who was 20 consulted or -- for documents from whom documents 21 were sought with respect to this -- the Coker case 22 and the documents that became Legacy 2 collection? 23 A. Well, as I mentioned, I know basically my 24 understanding comes from a read of the documents, 25 and it does note that some documents came from</p>	<p>Page 544</p> <p>1 Q. And is your information about that 2 collection limited to that letter? 3 A. There was a brief summary of it from -- 4 from counsel, and then there's the materials that 5 are in the Exhibit 4 table. 6 Q. Where it mentions the collection? 7 A. The noncustodial list, yes. 8 Q. When you say a summary from counsel, and 9 I'm not specifically -- are you talking about some 10 written summary as in, for example, what's written 11 here in Exhibit 4, or something additional? 12 A. No. I was generally told that there was a 13 case and I was being provided a letter about the 14 case to educate me. 15 Q. Do you know whoever did the search, and I 16 know -- whether, how narrowly or broadly their 17 instruction was as to -- well, do you know how 18 broadly or narrowly they interpreted what was 19 relevant to the inquiry? For example, if there 20 was a document with attachments and the 21 attachments, for example, maybe one of the 22 attachments doesn't match up some particular 23 search terms or group of search terms, whether or 24 not all of the attachments would be included? 25 A. I -- I don't have that information. I</p>

<p>1 mean, I understand from the memo certain searches 2 were conducted with certain custodians and other 3 sources where the documents were reasonably 4 calculated to be, that they were put in boxes at 5 some point. They were rearranged and reorganized. 6 But that that collection has been preserved 7 historically in a monolithic way and only -- only 8 what's in this letter is what I know about how the 9 collection was performed. 10 Q. And in looking at your noncustodial 11 sources here, Legacy, the Legacy 4 collection. 12 MR. SWANSON: Oh, let me stop for a 13 second. 14 Is it about time for a little break? 15 MR. COX: That sounds good. 16 MR. SWANSON: I think that's about the 17 right time. Okay. And we'll have lunch coming, 18 so. But we'll do some more testimony first. I 19 think it's -- isn't it 11:30? 20 MR. COX: It is. 21 MR. SWANSON: Yeah. That's fine. Okay. 22 Good. 23 THE VIDEOGRAPHER: This marks the end of 24 Media Number 2, Volume III in the deposition of 25 James Mittenenthal.</p>	Page 545	<p>1 holds from the context of consumer talc. I didn't 2 specify this case individually. 3 Q. We had spoken about the Gambino case and 4 the Westfall case. Were any Legacy document 5 collections created in connection with those 6 cases? 7 A. Well, I'm not aware of a precise 8 definition of a Legacy document collection. I 9 know that in the noncustodial sources there are 10 four designated groups of documents called Legacy 11 1 through 4 that have been denoted that for 12 various reasons. 13 I don't -- I also understand that -- that 14 the global put out -- the global talc production 15 and, in addition to that, the specific productions 16 for Leavitt and Fong were based on documents that 17 were available, both through the ongoing 18 collection process as well as the incorporation of 19 Legacy 1 through 4. 20 I'm not aware of any distinct sets that 21 have been created that are called "Legacy," 22 anything else. But I know that the company used 23 its best efforts to collect the information from 24 whatever relevant sources were available and 25 incorporated those Legacy cases as well.</p>	Page 547
<p>1 Off the record at 11:29. 2 (Recess taken.) 3 THE VIDEOGRAPHER: We are on the record at 4 11:52 a.m. 5 This marks the start of Media Number 3, 6 Volume III in the deposition of James Mittenenthal. 7 Counsel, you may continue. 8 BY MR. SWANSON: 9 Q. Okay. Let's see. Gather myself up here. 10 You have that letter in front of you. 11 That was Exhibit 10 we were talking about, the 12 Legacy 2 collection in the Coker case. 13 You remember that? 14 A. Yes. 15 Q. And that indicates on the first page that 16 the case was actually filed in 1997; correct? 17 A. Yes. 18 Q. Okay. And was a legal hold issued in that 19 case? 20 A. I don't have information about that. 21 Q. Now, you knew about this document and you 22 asked for legal holds in this case. 23 Did you ask if there was a legal hold for 24 this case? 25 A. I recall asking for all relevant legal</p>	Page 546	<p>1 MR. SWANSON: Move to strike as 2 nonresponsive. 3 BY MR. SWANSON: 4 Q. Was there -- do you have any information 5 that documents were gathered in connection with 6 the Westfall litigation that are part of the 7 global talc production of documents? 8 A. You know, I have no specific tie-back from 9 a document to a case. I have an understanding 10 that the documents that have been produced in this 11 case go back and in some cases many, many years to 12 the '60s before that. I -- I can't tie a 13 particular document to a particular prior case. 14 Q. Well, I mean, that's not really the case, 15 is it, because you've got these descriptions of 16 the Legacy collections and they tell you what 17 cases those were in connection with; correct? 18 A. Well, I was -- I believe I was speaking of 19 Legacy 1 through 4 as a carve-out to the general 20 approach that the company took to comply with its 21 production obligations. 22 Q. But you can tell from those Legacy 23 collections in connection with what case they were 24 done; correct? 25 A. I believe -- well, I --</p>	Page 548

<p>Page 549</p> <p>1 Q. It says right there, it says, "Coker" -- 2 for Legacy 2, "Coker v. Bill Thames Pharmacy." It 3 was primarily collected in connection with that. 4 A. Yes. I see that now. I just read through 5 them, yes. 6 Q. And the Legacy collections, these were 7 stored at attorneys' offices; correct? And we saw 8 that -- you saw that with Legacy 2; correct? 9 A. I'm not able to respond in every case 10 where they were stored. I know they were in 11 attorney custody. 12 Q. Okay. But -- and if you would just answer 13 the question, because you're talking about this 14 huge gathering of documents over many, many years. 15 The question is simply now, are -- do you 16 have any information that documents were gathered 17 in connection with the Gambino case by Johnson & 18 Johnson and became -- and are now part of the 19 global talc collection of documents? 20 A. Other than Legacy 1 through 4, I cannot 21 tie specific documents to historical -- historical 22 cases, but I can speak to the fact that the 23 document production goes back many, many years. 24 Q. Okay. I didn't ask about how far it goes 25 back. I'm -- I've looked at the document</p>	<p>Page 551</p> <p>1 litigation that are part of the global talc 2 production? 3 A. My reasoning is just based on the 4 understanding that the documents go back many, 5 many years. That's the basis I have to understand 6 that there may be documents from other cases that 7 are a part of the global talc production. 8 Q. And when you say "maybe," that means 9 you're speculating, true, as to those particular 10 cases? 11 A. Well, I think by definition it is 12 speculation. 13 Q. Okay. Thank you. 14 I want to go back to the testing results a 15 little bit. 16 You're aware that testing for asbestos was 17 done on a quarterly and annual basis; correct? 18 MR. COX: Object to the form. 19 THE WITNESS: I am aware that there are 20 many types of testing and that included, for 21 instance, quarterly testing. 22 BY MR. SWANSON: 23 Q. Did you make any attempt to -- did you 24 make any attempt to determine the number of tests 25 that were generated during the course of the</p>
<p>Page 550</p> <p>1 collection, I understand that. That's not 2 responsive to my question. 3 So please answer the questions -- and 4 you're putting a bunch of nonresponsive stuff in 5 here and I want to get through this. So. 6 And, again, as to the Westfall case, same 7 answer, you're not aware of any documents that are 8 now part of the global talc production that were 9 gathered initially during the period of the 10 Westfall case; true? 11 A. I just want to make sure I understand the 12 answer. I'm not aware of any documents that I can 13 associate specifically with that -- with that 14 case. 15 Q. And you don't know whether or not any of 16 the documents that are part of the global talc 17 production were gathered during that -- during 18 that pending litigation, are you? 19 A. I have not done that particular 20 investigation. 21 Q. So you're not aware of it; correct? 22 A. One way or the other. 23 Q. Well, do you have any reason to believe 24 that there are documents related that were 25 gathered during the period of the Westfall</p>	<p>Page 552</p> <p>1 period from 1965 when we first asked for testing 2 results to the present, testing for asbestos, that 3 is, in the talc? 4 A. I did not investigate the number of tests 5 performed and the -- and the particular date 6 range. 7 Q. And can you say that even 1 percent of the 8 testing results were produced in the Leavitt case? 9 MR. COX: Object to the form of the 10 question. 11 THE WITNESS: I'm not in a position, nor 12 did I conduct an investigation to ascertain 13 percentages of -- of test results produced. 14 BY MR. SWANSON: 15 Q. And you didn't -- so you didn't do an 16 audit; correct? 17 A. Well, as I mentioned, there's many types 18 of test results. Even if I had attempted to do an 19 audit, I might not have viewed testing categories 20 in the -- as anyone else would have viewed them. 21 It's -- there's -- a number of different types of 22 testing analysis, certificates. I -- I don't have 23 a specific parameter to even make that assessment. 24 Q. Well, for example, you know how many 25 quarters there are in a year; right?</p>

<p style="text-align: right;">Page 553</p> <p>1 A. I -- I think so.</p> <p>2 Q. Right. And you can multiply, so that if</p> <p>3 you -- if you could -- you could find out by</p> <p>4 asking Johnson & Johnson when it first started</p> <p>5 doing quarterly testing for certain types of</p> <p>6 quarterly tests; correct?</p> <p>7 A. Well --</p> <p>8 Q. For example, from the talc that came out</p> <p>9 of the mine, you could find that out; right?</p> <p>10 A. That presupposes that I would be able to</p> <p>11 ascertain how many tests were done each quarter,</p> <p>12 which -- and even that information I don't -- I</p> <p>13 would have to understand how -- what I do know is</p> <p>14 that there are tests that were performed</p> <p>15 quarterly.</p> <p>16 But how many tests, where the tests were</p> <p>17 performed, I have some information about that in</p> <p>18 my notes, but I can't specifically say where every</p> <p>19 quarterly test was done so that I could multiply</p> <p>20 it.</p> <p>21 Q. Right. But you didn't try to figure that</p> <p>22 out. You didn't see whether or not in theory that</p> <p>23 could be done because you didn't do an audit;</p> <p>24 correct?</p> <p>25 A. I didn't do an audit of the number of</p>	<p style="text-align: right;">Page 555</p> <p>1 perhaps as proper names, does it include any terms</p> <p>2 that are not in English?</p> <p>3 MR. COX: Object to the form.</p> <p>4 THE WITNESS: You know, I -- I can't</p> <p>5 interpret all of the terms. I can say that</p> <p>6 these -- that the terms are as you and I see them</p> <p>7 here are -- I don't -- many of them look like</p> <p>8 English words or names, but I can't necessarily</p> <p>9 interpret all the terms or verify if there's any</p> <p>10 that aren't in English.</p> <p>11 BY MR. SWANSON:</p> <p>12 Q. I want to go to your notes, the paginated</p> <p>13 notes that's Exhibit 26.</p> <p>14 A. I got to pull that out again.</p> <p>15 THE REPORTER: Here. That's it; right?</p> <p>16 THE WITNESS: Looks good.</p> <p>17 BY MR. SWANSON:</p> <p>18 Q. We had touched on this yesterday. But if</p> <p>19 you go to page 42, these are your contemporaneous</p> <p>20 notes from interviewing an Uday Sharan; is that</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. And you were discussing with him documents</p> <p>24 related to Johnson & Johnson India and Johnson &</p> <p>25 Johnson Thailand; is that right?</p>
<p style="text-align: right;">Page 554</p> <p>1 tests done.</p> <p>2 Q. Right. But hypothetically, you could go</p> <p>3 about trying to do that, correct, if you wanted</p> <p>4 to? You are telling us that that would be</p> <p>5 difficult and you're not sure if it could be done,</p> <p>6 but you can certainly think about how you would go</p> <p>7 about doing that and attempt to do that; correct?</p> <p>8 MR. COX: Object to the form.</p> <p>9 THE WITNESS: I mean, if we're talking</p> <p>10 hypothetically, I could -- I could -- you know,</p> <p>11 one -- not I, but one could attempt to conduct</p> <p>12 such an activity. I don't know if that</p> <p>13 information could be easily -- readily or even</p> <p>14 possibly ascertained, but one could go -- could go</p> <p>15 about an exercise to do that.</p> <p>16 BY MR. SWANSON:</p> <p>17 Q. I'm looking at Exhibit 6, and if you could</p> <p>18 pull that out, that's Tab 6 for you there. The</p> <p>19 next one in a row.</p> <p>20 And looking through this -- and Exhibit 6,</p> <p>21 for the record, what is that again?</p> <p>22 A. Those are to date -- or as of September 7,</p> <p>23 2018, a list of search terms by which the ERMS</p> <p>24 system was -- was searched.</p> <p>25 Q. Does that list include -- other than</p>	<p style="text-align: right;">Page 556</p> <p>1 A. Yes.</p> <p>2 Q. And he told you that the Thailand has</p> <p>3 batch manufacturing records, raw materials,</p> <p>4 packaging materials, and that the standard</p> <p>5 document retention was -- it says five years.</p> <p>6 There's a question mark next to it.</p> <p>7 Does that mean it was five years or around</p> <p>8 five years, do you remember?</p> <p>9 A. He -- he estimated it was five years.</p> <p>10 Q. Okay. Now, the Johnson & Johnson Thailand</p> <p>11 was making baby powder for distribution in Europe,</p> <p>12 correct, according to your notes?</p> <p>13 A. According to my notes.</p> <p>14 Q. And would you agree that the legal</p> <p>15 standards with respect to lawsuits and document</p> <p>16 retention and those sort of things are tougher in</p> <p>17 Europe, for example, or the United States, than</p> <p>18 they are in -- overseas in many countries like the</p> <p>19 Philippines?</p> <p>20 MR. COX: Object to the form of the</p> <p>21 question. And beyond the scope of the notice.</p> <p>22 THE WITNESS: I mean, it would call for</p> <p>23 some speculation. I mean, I know in Europe and</p> <p>24 other parts of the world there's -- there's</p> <p>25 certain privacy standards that are beyond those in</p>

<p>Page 557</p> <p>1 the U.S. I don't think it's an easily answerable 2 question even as a hypothetical. 3 BY MR. SWANSON: 4 Q. Do you know if the standard, for example, 5 the retention on these types of documents at J -- 6 Johnson & Johnson Philippines, which as I 7 understand makes Johnson's Baby Powder for the 8 Philippines, Philippines consumption, are -- the 9 retention period is as long? 10 MR. COX: Object to the form. 11 THE WITNESS: Yeah, I don't have specific 12 information on that. 13 BY MR. SWANSON: 14 Q. Were -- just so that the record is clear, 15 in Fong and Leavitt on these overseas searches, in 16 Leavitt, are there contemporaneous records -- 17 well, I should say, are there -- were there any 18 records produced -- located with respect to 19 Johnson & Johnson Philippines and the baby powder 20 manufactured there contemporaneous with her 21 exposure -- or alleged exposure in the 1966 to 22 1968 period in the Philippines with respect to the 23 mining, milling, or manufacturing of the talc and 24 the baby powder? 25 MR. COX: Object to the form.</p>	<p>Page 559</p> <p>1 mines, let's throw in there milling and 2 manufacturing since you're doing the search and 3 then we can touch on anything you do find. 4 A. And I'm just applying my general 5 understanding of your questions to these 6 categories, that is not dispositive, but, for 7 instance by your question, I would assume you 8 don't care about, for the sake of this question, 9 trade organization payments. 10 Q. Correct. 11 A. Or Workers' Comp. 12 Q. I'm asking about the mining, milling -- 13 the mining of the talc, the milling of the talc, 14 and the manufacturing of the baby powder with 15 respect to the Johnson's Baby Powder that was 16 manufactured in the Philippines from 1966 to 1968. 17 A. I'm sorry, I was reading Pam Downs' 18 section as you were restating the question. 19 I just want to hear it one more time 20 specific to the country. 21 MR. SWANSON: Can you read that, my 22 clarification, back to him? 23 (Record read by the court reporter.) 24 THE WITNESS: You know -- and I'm not an 25 expert on all the places where talc was mined and</p>
<p>Page 558</p> <p>1 THE WITNESS: I need to understand just a 2 couple parts of your question better. 3 Were those -- were there contemporaneous 4 documents located that were stored in those 5 countries or that were relating to those countries 6 but stored, let's say, in the United States? 7 BY MR. SWANSON: 8 Q. Yeah. Let me break it down a little bit 9 more, and it would be -- it would be either. Are 10 there any documents regarding the mining of the 11 talc for use in Johnson's Baby Powder that was 12 manufactured in the Philippines contemporaneous 13 with her exposure, in other words, for that period 14 1966-1968? 15 A. You know, I'm going to look at the 16 specific searches in that area. In terms of 17 information stored in the U.S., there -- I can't 18 speak to that. I have not looked at the global 19 talc production or the specific Leavitt 20 production. 21 There may -- I'm going to also consult the 22 production summaries to see if there's anything 23 written down about that. So I'm just going to 24 look at those sources. 25 Q. And since I asked the question specific to</p>	<p>Page 560</p> <p>1 manufactured and I'm not here to respond to that 2 specifically. I'm just noting that in my Pamela 3 Downs notes, it indicates for the Philippines that 4 talc was not mined there but was manufactured 5 there for a while. 6 BY MR. SWANSON: 7 Q. Right. And we had touched on this before, 8 and I had informed you based on the discovery 9 responses of Johnson & Johnson that the talc came 10 from Korea. 11 A. Yes. 12 Q. So if you have the information about the 13 mining and milling of Korean talc contemporaneous 14 with Teresa Leavitt's exposure in the Philippines 15 from 1966 to '68 that would be also responsive. 16 MR. COX: So why don't you take a look at 17 what you need to look at and then answer his 18 question. 19 THE WITNESS: I'm sorry. Take a look at 20 what? 21 MR. COX: Why don't you take a look at 22 whatever you need to look at and then answer 23 Mr. Swanson's question. 24 MR. SWANSON: That's fine. Let me -- and 25 I can re-ask the question later.</p>

<p>Page 561</p> <p>1 BY MR. SWANSON:</p> <p>2 Q. Let's just -- let me be clear about the</p> <p>3 totality of what I am asking and I'm going to ask</p> <p>4 as to the Philippines and Teresa Leavitt's</p> <p>5 exposure and I'm going to ask as to Hong Kong.</p> <p>6 So for the Philippines, it's going to be</p> <p>7 the bottling of the talc related to Johnson &</p> <p>8 Johnson Philippines, the manufacturing, and it</p> <p>9 will be the mining and the milling of the talc</p> <p>10 that was used for that. And these are</p> <p>11 contemporaneous with her exposure. So '66 to '68</p> <p>12 period, okay? So that talc would have come from</p> <p>13 Korea based on what Johnson & Johnson has told us.</p> <p>14 And then in the Fong case, it would be the</p> <p>15 Johnson & Johnson baby powder distributed in Hong</p> <p>16 Kong from 1971 to '83, contemporaneous with that</p> <p>17 period, and it would be the mining of the talc</p> <p>18 during that period, mining and milling of the talc</p> <p>19 during that same period. And that talc, from what</p> <p>20 we have been told, also came from Korea.</p> <p>21 So it's whether or not there are any</p> <p>22 contemporaneous documents that have been located</p> <p>23 and produced for that.</p> <p>24 A. So I want to -- I want to find the</p> <p>25 production requests.</p>	<p>Page 563</p> <p>1 or not documents related to the mining and milling</p> <p>2 of talc or the manufacturing of the baby powder</p> <p>3 contemporaneous with their exposure in Hong Kong</p> <p>4 and the Philippines -- and I'll separate them --</p> <p>5 were located and produced.</p> <p>6 Do you remember that?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And have you had an opportunity to</p> <p>9 look at anything else?</p> <p>10 A. So I -- I did this for both Hong Kong and</p> <p>11 the Philippines: consulted my notes, specifically</p> <p>12 noncustodial sources, interview notes, including</p> <p>13 the interview notes with Pam Downs.</p> <p>14 I looked at the chart that I had assembled</p> <p>15 that represented the follow-up collection efforts</p> <p>16 for Leavitt and Fong.</p> <p>17 I then turned to the document production</p> <p>18 summaries and --</p> <p>19 Are we on Fong or Leavitt at this point?</p> <p>20 Q. Let's talk about Leavitt first and Johnson</p> <p>21 & Johnson Philippines, the manufacturing of that</p> <p>22 baby powder from '66 to '68 and the mining and</p> <p>23 milling from Korea that was used in that baby</p> <p>24 powder.</p> <p>25 A. Well, I can't answer the questions with</p>
<p>Page 562</p> <p>1 Q. Now, the production requests --</p> <p>2 Do you have the -- well, yeah. Go ahead</p> <p>3 and look at that.</p> <p>4 A. Actually...</p> <p>5 MR. SWANSON: Yeah. Why don't we do this,</p> <p>6 let's take our break and grab our lunch.</p> <p>7 Obviously, since I've committed to a stop</p> <p>8 time, I don't want to, you know, run out my clock</p> <p>9 by taking the time to do this.</p> <p>10 If you can sort of gather your thoughts</p> <p>11 during the break, that would be great.</p> <p>12 Okay. Let's go ahead and go off the</p> <p>13 record.</p> <p>14 THE VIDEOGRAPHER: Off the record at</p> <p>15 12:17.</p> <p>16 (Lunch break taken.)</p> <p>17 THE VIDEOGRAPHER: On the record at 1:02.</p> <p>18 You may continue, Counsel.</p> <p>19 BY MR. SWANSON:</p> <p>20 Q. Okay. Mr. Mittenenthal, we've had our lunch</p> <p>21 break. Are you okay to continue?</p> <p>22 A. Yes.</p> <p>23 Q. Good. Before the break, I was asking you</p> <p>24 very specific questions -- or I was attempting</p> <p>25 to -- about the Fong and Leavitt cases and whether</p>	<p>Page 564</p> <p>1 respect to the specific entities of Johnson &</p> <p>2 Johnson. What I attempted to do was to understand</p> <p>3 the extent to which those questions have been</p> <p>4 asked for document production and that document</p> <p>5 responses have been provided.</p> <p>6 To do so, with respect to Leavitt, I</p> <p>7 looked at this production summary which has been</p> <p>8 marked as Exhibit 14 and I looked first of all at</p> <p>9 the Set 3 which is -- has tabs that, in the</p> <p>10 document production responses that relate to just</p> <p>11 general questions about entities that supplied</p> <p>12 talc and mines that were sources of talc and the</p> <p>13 J&J Company's role in mining and processing of</p> <p>14 talc and the specified date range to see if there</p> <p>15 was anything specific to the contemporaneous time</p> <p>16 frames for Fong or Leavitt -- well, in this case,</p> <p>17 Leavitt -- or any indications of those overseas</p> <p>18 locations.</p> <p>19 I looked -- as I mentioned, I looked in</p> <p>20 the RFP Set 3 for those and I looked specifically</p> <p>21 at responses on, I believe, starting on page 8</p> <p>22 which is Request -- I'm sorry -- page 7, Request</p> <p>23 22. And I did not see anything specific to the</p> <p>24 particulars of your question in terms of</p> <p>25 locations.</p>

<p>Page 565</p> <p>1 I went to then RFP Set 7 which was 2 specific to the Philippines and the aforementioned 3 date ranges and I consulted to the responses to 4 RFP Set 7 which begin in the binder that I have as 5 tab N as in Nancy, and in the -- starting with 6 page 1, Request 99, I reviewed those productions 7 and production summaries, and, as noted, there 8 were certain documents identified in response to 9 that -- to those searches, including some that 10 were designated confidential. In reviewing those, 11 started with 99, continuing through page 2, I note 12 that in response to RFP 103, "All documents 13 regarding or reflecting the locations where 14 Johnson's Baby Powder was manufactured which was 15 supplied to the Philippines from 1965 through 16 April 1968," there is an indication that there 17 were documents produced and that the Exhibit 1, 18 which is, I believe, a spreadsheet of -- 19 containing the relevant Bates ranges under Tab 2, 20 denotes the documents that were responsive to 21 that.</p> <p>22 I also continued going through Request 104 23 and noted the request for locations where 24 Johnson's Baby Powder was manufactured which was 25 available for purchase in the Philippines from</p>	<p>Page 567</p> <p>1 maybe I just heard that, but you were actually 2 looking at the Set 2 of request for production to 3 Johnson & Johnson Consumer, Inc.; correct? That's 4 the numbers you were referencing. They're fairly 5 equivalent, but the numbering is different, so I 6 just wanted to be clear. That's what you were 7 just referencing when you were going through Set 8 Number 7?</p> <p>9 MR. COX: Look at the footer. 10 THE WITNESS: Oh. Yeah. I'm sorry, 11 Johnson & Johnson Consumer, yes. 12 BY MR. SWANSON: 13 Q. And I didn't have that in front of me. So 14 let me -- and you haven't reviewed the specific 15 documents that were stated as being responsive to 16 those requests; correct? 17 A. Correct. I noted on the first day that I 18 had run various documents from the production to 19 get an understanding of several hundred documents. 20 I didn't review any of these production sets 21 specifically for that goal. 22 Q. So, yeah, you kind of -- because I didn't 23 have this in front of me, I wasn't looking at the 24 same thing you were talking about. 25 So we're going to have to go through it</p>
<p>Page 566</p> <p>1 1966 through April 1968, and also noted documents 2 that were provided in response in Exhibit 1, 3 Tab 2. And then continued on through 104, 105, 4 106, 107. And then 107, which was documents 5 regarding or reflecting what entities supplied 6 talc that was used in Johnson's Baby Powder 7 supplied to the Philippines from 1965 through 8 April 1968. I noted that in Exhibit 1, Tab 3 9 there were other documents produced in response to 10 that request, as well as Request For 11 Production 108, which was similar, although 12 instead of supplied to the Philippines, it was 13 available for purchase in the Philippines from 14 1966 through 19' -- April 1968.</p> <p>15 The documents were produced in that same 16 exhibit, Exhibit 1, Tab 3. So that was -- those 17 were the request for production categories that I 18 consulted that yielded documents that had been 19 produced that I believe are in the context of your 20 question.</p> <p>21 Q. All right. So you provided a lot of 22 information there. We're going to have to break 23 that down substantially.</p> <p>24 You threw me off there. You were actually 25 talking about -- you said Johnson & Johnson, and</p>	<p>Page 568</p> <p>1 again even though you gave me that long answer. 2 Let's start with Request 103 on Set Number 3 7. That's reflecting the locations, okay? There 4 were a list there of documents. Let's see. 5 And, I'm sorry, what was the other set 6 that you were referring to, Set Number 5? 7 A. I believe it was Set 3, and that was just 8 from the standpoint of making sure that in the -- 9 sort of the general request for production that 10 didn't specify a country, I wanted to confirm that 11 there were no mentions of those countries in any 12 of the responses. So I consulted RFP Set 3, the 13 tabs that included 6, 7, 8. 14 Q. Okay. 15 A. Just to make sure there were no mentions. 16 Q. Okay. So let me -- and I'm not going to 17 make too firm of a representation about exactly 18 what has been produced. But let me start with 19 just asking you, or confirming. You didn't review 20 the specific documents that were -- that were 21 identified as being produced to those requests we 22 talked about. So, going back to my original 23 question, if you can answer this because -- well, 24 let me -- let me back up another step. 25 When I looked at your notes on the</p>

<p>Page 569</p> <p>1 Philippines in the Hong Kong -- and Hong Kong and 2 looking at what I had looked at from the 3 production in your notes, it looked to me like 4 what had been -- what -- that, for example, Hong 5 Kong they weren't related -- they weren't able to 6 locate any responsive documents. 7 And, as to the Philippines -- and this is 8 looking at page, I think, 64 of your notes -- 9 saying that nothing had been found in the date 10 range. 11 So that's where I started with this, is 12 that you had nothing being found in that date 13 range, so -- and you haven't reviewed specifically 14 the documents that were produced in response to 15 the request that you pointed out. 16 So are you aware of any manufacturing 17 documents with respect to the Philippines 18 Johnson's Baby Powder that were produced for that 19 period from 1966 to 1968? 20 A. Well, I don't -- I'm interpreting these 21 broadly. So I don't know what "supply" means. 22 For instance... 23 Q. And "supply" does include manufacturing. 24 A. Okay. So, for instance, in 101, the 25 documents regarding or reflecting location where</p>	<p>Page 571</p> <p>1 because the question is not phrased precisely that 2 way and it's phrased broadly enough that it can 3 include other documents. So. 4 But you haven't reviewed the specific 5 documents that were produced; right? 6 A. I've sampled them. I have not reviewed 7 them. 8 Q. Sampled them. Right. 9 A. Yes. 10 Q. And your initial -- your initial notes 11 speaking to Pam Downs it indicated that there 12 weren't any documents related to the 13 manufacturing, correct? 14 MR. COX: Object to the form. 15 BY MR. SWANSON: 16 Q. During the -- during the relevant time 17 period. 18 A. My notes from Ms. Downs covered the onsite 19 searches of archive materials in the Philippines, 20 so that -- that only covered that category of 21 document searches. 22 Q. As to -- and what about as to the mining 23 and milling by the Korean talc supplier. Do you 24 have any -- has Johnson & Johnson produced 25 documents regarding the mining and milling of the</p>
<p>Page 570</p> <p>1 Johnson's Baby Powder was manufactured which was 2 supplied to the U.S. Navy in the Philippines in 3 the date range. 4 So I conclude that that is a part of your 5 question insofar as it relates to manufacturing. 6 Q. Yes. "Supply" includes manufacturing. 7 A. Okay. So, for instance, in page 2 of 8 Tab -- I guess this is Set -- Set -- Set 7 -- 9 Q. Uh-huh. 10 A. -- of -- in the -- in the notebook under 11 Tab N, Number 103 on page 2, "documents regarding 12 or reflecting location where Johnson's Baby Powder 13 was manufactured which was supplied to the 14 Philippines." 15 So that is "manufactured." There were 16 documents provided that are reflected in 17 Exhibit 1, Tab 2. 18 Q. Right. And that's regarding the location. 19 Okay. I guess -- and partly I may need to get to 20 the bottom of this by specifically looking through 21 each and every document that was produced. What I 22 am telling you is that I am not aware of documents 23 specific to the manufacturing being produced for 24 the Philippines for that '66 to '68 time frame. 25 And I don't think the answer resolves that issue</p>	<p>Page 572</p> <p>1 talc contemporaneous with Ms. Leavitt's exposure 2 from '66 to '68? 3 A. Well, you know, I'm not the best person to 4 interpret what's covered in some of these 5 requests. It is possible that 103 would cover 6 that. 7 Q. Okay. Let's -- I get that, and -- but 8 that's a specific question. And, you know, 9 whether or not there was a request that covered 10 it, because simply you looking at what tabs were 11 referenced in an Excel spreadsheet and the Bates 12 numbers isn't going to tell you if something was 13 produced specifically responsive to my question. 14 So -- and if you don't know the answer, 15 that's fine, but I don't want a record that is 16 unclear, so -- and if you don't know and we just 17 need to look at it again, that's okay. But I 18 don't have -- yeah. I think if you can just focus 19 on the question -- and if you don't have the 20 answer based on the information that you have, 21 that's fine. 22 A. I've gathered a lot of information in 23 anticipation of these topics, including all the 24 productions, my notes. In response to the 25 question at hand, I have tracked down what I think</p>

<p>Page 573</p> <p>1 is the best place to look to definitively answer 2 the question. I have certainly not reviewed the 3 documents to determine which ones are specifically 4 responsive, but this is -- this is my best answer 5 to where one would determine those documents that 6 are in the context of your requests. 7 Q. And as to -- we're not going to get -- 8 obviously get to the bottom of this right now in 9 terms of the -- whether or not those documents 10 are, but if those documents listed aren't 11 regarding the manufacture during that time period 12 of from '66 to '68 of Johnson's Baby Powder at the 13 Philippines facility, then they weren't produced; 14 correct? 15 MR. COX: Object to the form. 16 THE WITNESS: Well, once again, what you 17 are asking for sounded a lot like this category. 18 Now, as you said, the category may not be 19 precisely those documents. There may be overlap. 20 But it's the closest approximation of what you're 21 looking for. 22 BY MR. SWANSON: 23 Q. I understand that. And that's the best 24 you can do based on that. This is just the 25 question, though, if those documents -- and I've</p>	<p>Page 575</p> <p>1 here, but there are reasons why they -- they could 2 have been misfiled in a different part of the 3 warehouse. I mean, I'm just saying there are -- 4 you know, there are errors in the process that 5 occur from time to time in filing information. 6 BY MR. SWANSON: 7 Q. Same question as to Hong Kong. Did you 8 look at Hong Kong to see if you had -- if Johnson 9 & Johnson produced manufacturing documents 10 contemporaneous with Ms. Fong's exposure? 11 A. So as I mentioned, I consulted my notes, 12 including my typewritten notes, my follow-on with 13 Pamela Downs, the noncustodial document listing. 14 Then I further went to the production summaries 15 for Fong, RFP Set 1. It speaks to mining 16 entities, mines that produced talc for JPP in Hong 17 Kong '70 through '84. Other -- the next four or 18 five entries -- and I went to the corresponding 19 sections, which I believe are in the Fong binder 20 under discovery responses, Tab 3, Subtab C, and 21 looked through -- well, I looked through -- just 22 starting from the beginning, looked through 1, 2, 23 3, 4. I'm up through -- you know, it was -- it's 24 more difficult to connect your question to the 25 specific categories in Fong. I -- for instance, I</p>
<p>Page 574</p> <p>1 reviewed them and I haven't seen what I'm looking 2 for here and that's why I'm asking. And, you 3 know, there are a lot of documents, so it's 4 possible I missed it. 5 But if those -- if those documents 6 regarding the manufacture of the baby powder from 7 '66 to '68 aren't listed among those documents in 8 those tabs that are cited, then they were not 9 produced; correct? 10 A. That would -- that would make sense. 11 Q. Okay. And if they hadn't been produced, 12 assuming they hadn't been produced -- and I 13 understand this is a hypothetical -- then they 14 were destroyed at some point; correct? 15 MR. COX: Object to the form. 16 THE WITNESS: I mean, that -- that is one 17 explanation. That is also a hypothetical as to 18 what happened, why they weren't produced. They -- 19 they -- there's other explanations. 20 BY MR. SWANSON: 21 Q. The other explanation would be what, that 22 a -- not an adequate search was done? 23 MR. COX: Object to the form. 24 THE WITNESS: They could have been 25 mislabeled. I'm, you know, in hypothetical land</p>	<p>Page 576</p> <p>1 looked at Response 11, "testing of talc marketed 2 in Hong Kong from '70 through '84." There were 3 documents produced for that. I understand that to 4 be part of the manufacturing process. 5 I looked at response -- Request For 6 Production 12. 7 I haven't found other document categories 8 that were produced that are directly reflective of 9 your question in Fong, looking at -- looking 10 through the production set. 11 Q. The same thing in Fong, you haven't looked 12 at the actual documents that were produced under 13 those categories related to Hong Kong 14 manufacturing; correct? I mean, you see where 15 some Bates numbers have been identified; correct? 16 A. Yes. And I sampled some documents. But I 17 haven't looked at them for the eye to verifying 18 what was there. 19 Q. Were -- just in terms of audio that was 20 produced in the Leavitt and Fong matters, were the 21 only audio records that were produced related to 22 advertising? 23 A. You know, I was just checking the 24 noncustodial sources to see if there's any 25 additional information about that. I -- I don't</p>

<p style="text-align: right;">Page 577</p> <p>1 know for sure. An audio file could just be a 2 computer file type that's present in a custodial 3 production in a share directory. I can't speak to 4 the extent to which there may be files that have 5 audio in them. 6 Q. If you go to Exhibit Number 6 which are 7 the archive search terms. You have -- it's Tab 6 8 in your binder. 9 A. Okay. Thank you. 10 Q. And these are the archive search terms 11 that are used in the ERMS system to locate 12 documents that may have relevant documents to the 13 talc litigation, correct, that are Iron Mountain's 14 archive documents and I believe some onsite 15 collections, too; is that correct? 16 A. There are -- onsite there is a movable 17 file system in the records-keeping facilities, and 18 the ERMS would have covered that area as well as 19 offsite storage. 20 Q. And this was the most recent list of 21 archive search terms; true? 22 A. Yes. 23 Q. If you go to -- I don't these are 24 numbered, but if you go to the third page of this, 25 they're alphabetical, though, right, the search</p>	<p style="text-align: right;">Page 579</p> <p>1 MR. COX: Object to the form. Beyond the 2 scope of the notice. 3 THE WITNESS: You know, I didn't see that 4 as my area to investigate under the scope of the 5 notice. I will say that the composition of the 6 searches is -- some of the attorneys have made 7 their work product, and I have a general 8 understanding that it's designed -- the totality 9 of the search terms are designed to cast a very 10 wide possible net. The search terms have been 11 refined over time. They have been provided to the 12 plaintiffs, as I understand. I -- I can't opine 13 on whether a particular term would have been 14 appropriate in the context of all the terms 15 presented. 16 MR. SWANSON: Move to strike nonresponsive 17 portions. 18 BY MR. SWANSON: 19 Q. If you -- if you see under Exhibit 6, 20 there's a search term "mesothelioma"? 21 A. Yes. 22 Q. Okay. Do you know if this system is set 23 up to do stem searches? 24 A. You know, I did not conduct a -- and I 25 think we got into this on a previous day as well.</p>
<p style="text-align: right;">Page 578</p> <p>1 terms, the way they're set out here? 2 A. Well, I don't know if the search 3 descriptions or the terms are alphabetical. I 4 believe it's the search titles, not the terms. 5 Q. Do you see the search term "fiber" 6 anywhere in these archive search terms? 7 A. I don't see the term "fiber," but it may 8 be there. As a quick go-through, I don't see it. 9 Q. That is a term which I don't see it in 10 there and I've looked at it. That's a term that 11 should be in there, shouldn't it, for talc 12 litigation? 13 MR. COX: Object. Object to the form of 14 the question. Beyond the scope of the notice. 15 BY MR. SWANSON: 16 Q. I mean, you told us that people would 17 enter information about the boxes and the amount 18 of information and descriptive information they 19 would vary. 20 Isn't "fiber" a term that you'd want to 21 look for if you were looking for documents 22 relevant to asbestos talc litigation where there's 23 an allegation that the tremolite that's being 24 found in Johnson's Baby Powder is fibrous 25 tremolite?</p>	<p style="text-align: right;">Page 580</p> <p>1 I don't -- I didn't understand -- seek to 2 understand the search engine behind ERMS and how 3 it does stem searches or fuzzy searches or if it's 4 Google-like in the way it returns information. 5 BY MR. SWANSON: 6 Q. And it makes sense that "mesothelioma" 7 could be misspelled by people; right? 8 MR. COX: Object to the form. 9 BY MR. SWANSON: 10 Q. It's a complicated enough word that one 11 would expect that that could be misspelled; true? 12 MR. COX: Object to the form. 13 THE WITNESS: Yes. In general I would 14 agree as a -- as a lay opinion. 15 BY MR. SWANSON: 16 Q. And you would want, then, search terms 17 that would pick up possible misspellings, and one 18 way to do that is to have what's sometimes called 19 a "stem search"; correct? 20 A. For the sake of certain search engines, I 21 would agree with you. 22 Q. And if you continue on here, if you look 23 at -- if you look in the Ts, do you see the term 24 "talc" in there? 25 A. Yes.</p>

<p style="text-align: right;">Page 581</p> <p>1 Q. There is no term "talcosis" in there, is 2 there? 3 A. I wouldn't guarantee it, but I don't see 4 it. 5 Q. I mean, most of these things from your 6 view of this are alphabetical, right, even the 7 search terms and the search description that 8 generally are falling in the same alphabetical 9 range; correct? 10 A. They appear to be alphabetized. 11 Q. Okay. If you go to the Cs, you've heard 12 the term "cleavage fragment" when it comes to talc 13 and testing talc for the presence of asbestos? 14 A. I -- I'm not sure if I know that 15 expression or not. 16 Q. You haven't heard it? 17 A. I may have. I don't recall. 18 Q. It's something that the -- it's an element 19 found in testing results -- or claimed in testing 20 results that, for example, the tremolite that's 21 being found or the anthophyllite is a cleavage 22 fragment and not an asbestos fiber. 23 Have you heard about that controversy at 24 all? 25 A. I'm not current on the technical details</p>	<p style="text-align: right;">Page 583</p> <p>1 may be relevant, but it may not be a criteria to 2 retrieve a box. 3 BY MR. SWANSON: 4 Q. And -- now, you say it may not be a 5 criteria to return a box. 6 The -- the information that you gave me 7 about what were required terms on those boxes, if 8 I remember right, was a date range, the retention 9 cutoff period, and the department; correct? Those 10 were required terms. 11 A. Well, the retention series. 12 Q. Okay. Retention series. 13 A. Which would then be driven off the date 14 range, but yes. 15 Q. Okay. That's -- and then they were 16 supposed to put in a textual or a narrative 17 description of the contents of the box; correct? 18 A. Yes. 19 Q. And there were no hard-and-fast rules that 20 you knew about that were consistent throughout the 21 company in terms of exactly what information was 22 in there; right? 23 A. As I recall, the department, each 24 individual department, was responsible for how 25 that information was entered based on the</p>
<p style="text-align: right;">Page 582</p> <p>1 of that. 2 Q. Assuming that I didn't misrepresent that 3 to you, wouldn't it make sense that you would want 4 the term "cleavage" in these archive search terms? 5 A. You know, once again, my understanding is 6 that these search terms were designed to retrieve 7 boxes that had been denoted a certain way to be 8 sent to storage. 9 I don't -- I -- I'm not opining on whether 10 a term like that would be appropriate to locate a 11 box in this particular context. 12 Q. If you go to the Is -- turn to the Is 13 here. 14 Are you there? 15 A. Yeah. 16 Q. "I-N"? 17 A. Yes. 18 Q. You see the term "inhalation" anywhere? 19 A. I -- I don't see the term "inhalation" on 20 this page. 21 Q. Certainly you can agree with me that 22 "inhalation" is a relevant term when -- a relevant 23 term to the talc litigation; correct? 24 MR. COX: Object to the form. 25 THE WITNESS: As I mentioned before, it</p>	<p style="text-align: right;">Page 584</p> <p>1 requirements laid out by the SOP of the records 2 department. 3 Q. So how did Johnson -- based on that and 4 based on the issues that are -- would be relevant 5 here, how did Johnson & Johnson go about 6 determining the terms such as "fiber" and 7 "inhalation" and "talcosis" and "cleavage" are not 8 relevant? Because you don't know specifically 9 what that individual is going to put in their 10 textual description, do you? 11 MR. COX: Object to the form. 12 BY MR. SWANSON: 13 Q. And it's variable. 14 A. As I mentioned before, the search terms 15 were designed to return a large overly inclusive 16 set of boxes. The search terms have been refined 17 over time and they've been -- the decision as to 18 what goes into a search term is -- is a legal -- 19 ultimately a legal decision. 20 Q. And they've been refined over time to make 21 changes; correct? 22 A. Well, that -- I think that's the 23 definition of "refined." 24 Q. And giving Johnson & Johnson's lawyers the 25 benefit of the doubt in terms of creating that,</p>

<p>Page 585</p> <p>1 you would hope that the changes that were made 2 over time were to improve this and make it catch 3 more relevant documents; true? 4 MR. COX: Object to the form. 5 THE WITNESS: Well, "improve" is a -- is 6 one rationale that there may have been other 7 specific searches related to Leavitt and Fong that 8 would have been added so it was -- the -- the 9 search terms themselves reflect all of the cases 10 and matters and needs that have been, up until 11 that present time, encapsulated in the -- in the 12 list. 13 BY MR. SWANSON: 14 Q. You're not saying this is a perfect list, 15 are you? 16 A. I don't believe I said that. 17 Q. Okay. And you're not testifying either 18 that -- you don't know one way or the other 19 whether or not using the terms "talcosis," 20 "fiber," "cleavage," "inhalation" would produce -- 21 would catch more boxes of documents that had 22 relevant information and documents in them; true? 23 A. That's a hypothetical. I'm not able to 24 speak to that hypothetical, no -- or yes. I 25 mean --</p>	<p>Page 587</p> <p>1 topics that were identified in plaintiff's 2 deposition notice? 3 A. There were a number of different topics in 4 the notice. They covered a number of different 5 functional areas and departments, and my prior 6 experience with the company and as a consultant, 7 my knowledge of the information enabled me to go 8 and speak to people in the various aspects of the 9 company to gather the documentation to cohesively 10 bring all the information together to be able to 11 provide the best answers to those questions. 12 Q. Did you investigate all of the areas in 13 which you were asked to provide testimony over the 14 three days? 15 A. Yes, I did. 16 Q. Can you please describe how you did that 17 investigation? 18 A. Well, I conducted at least -- I conducted 19 four site visits. During that period, I spoke to 20 various records managers and people with 21 responsibility for document issues. Over time, I 22 expanded the list of people that I interviewed to 23 encompass nearly 40 people and nearly 70 24 single-spaced typewritten pages of notes. 25 I requested a number of documents,</p>
<p>Page 586</p> <p>1 Q. Right. Because you -- you haven't audited 2 that, have you? 3 A. "Audited" by meaning that I haven't -- 4 Q. By adding -- nobody did an experiment, as 5 far as you know. Johnson & Johnson hasn't audited 6 this to add a search term like "fiber" and see if 7 it would pick up anything else, has it? 8 A. I -- I don't know. That was beyond the 9 scope of my inquiry for this matter. 10 MR. SWANSON: Okay. I'll keep to my 11 promise. 12 MR. COX: Can we go off the record for a 13 moment? 14 MR. SWANSON: Yes. 15 THE VIDEOGRAPHER: Off the record at 1:45. 16 (Off the record.) 17 THE VIDEOGRAPHER: On the record at 1:48. 18 You may proceed, Counsel. 19 CROSS-EXAMINATION BY MR. COX: 20 Q. Mr. Mittenthal, I'm just going to ask you 21 a few questions on behalf of the J&J defendants, 22 okay? 23 A. Yes. 24 Q. Do you have an understanding of why you 25 were asked to provide testimony in response to the</p>	<p>Page 588</p> <p>1 including retention schedules, policies and 2 procedures, other supporting materials. I asked 3 for production summaries and built with that 4 information timelines, applications listings, 5 people listings of -- lists of legal holds which I 6 requested, and better in order to understand the 7 document population itself. 8 I loaded a litigation review tool on my 9 computer and went through various aspects of the 10 production, looked at the exhibit spreadsheets and 11 the various tabs, and put Bates ranges in to look 12 at the documents specifically. 13 I sampled several hundred documents. 14 I conducted follow-up interviews. 15 I -- probably in total I put together 16 about ten different reference aids in order to be 17 able to respond to the questions. 18 Q. You mentioned interviewing a number of 19 people, nearly 40 people. 20 What disciplines or functional areas did 21 those individuals cover? 22 A. They included people in the records 23 function, in the quality function. And that's 24 both supplier quality as well as internal quality 25 control; records officers; IT people; procurement</p>

<p>Page 589</p> <p>1 people; people involved with the supply chain; 2 people in the corporate organization, including 3 records officers; third parties, including several 4 vendors who were responsible for assisting in 5 retrieving and staging documents. That brought 6 the total to about close to 40. 7 Q. And you mentioned that the list of 8 interviewees expanded over time. 9 Who determined which individuals you 10 interviewed in connection with your fact-finding? 11 A. I did. 12 Q. How did you go about doing that? 13 A. Well, I asked to identify the records 14 officer first. And then that led me to a records 15 person who had more experience actually running 16 the searches in the system, and then that brought 17 me to the corporate records people. 18 I had previously experience with the 19 corporate reports people, so I knew some of the 20 people to ask and also some of the corporate IT 21 people to ask. 22 And then, through the records officers at 23 the consumer level, I was able to get names of 24 other people involved with R&D and supply chain 25 and supplier quality and, you know, sort of built</p>	<p>Page 591</p> <p>1 at the corporate level as well as at the consumer 2 level or the operating company level. And I knew 3 which procedures were operational at the corporate 4 level, the worldwide policies and supporting 5 schedules. Through the results of my interviews 6 at the consumer level, I learned of the existence 7 of the consumer level schedules and their 8 histories and requested those. 9 I was also -- also went to the legal team 10 and requested the document productions, their 11 request for interrogatories, the holds, the 12 pleadings of other -- other materials in the case 13 file to best educate myself, both about the nature 14 of the Fong and Leavitt cases as well as the 15 efforts to produce information to date. 16 Q. In terms of all of the efforts you've 17 described involved in your preparation, over how 18 long a period of time did that occur? 19 A. I started in the -- in the spring of 2018 20 approximately March -- in the March time frame. 21 Some of the people I knew had come from earlier 22 efforts in other matters. But my fact-finding in 23 this case -- and I went to all those people, 24 starting in March and interviewed them all going 25 forward.</p>
<p>Page 590</p> <p>1 upon those lists additional names. 2 And then, with respect to the actual 3 collection activities, I knew -- I knew from 4 counsel who the vendors were and sought to 5 interview the vendors. 6 And then, in terms of some of the 7 follow-up, I found it necessary to speak to people 8 in the corporate secretary's office to learn 9 information about the additional searches 10 conducted for the cases. 11 Q. Did you identify any individuals at any 12 time during your investigation that you believed 13 were important to your fact-finding but who you 14 did not speak with? 15 A. I did not. 16 Q. Were there any questions during your 17 interviews that you wanted to ask people that you 18 were not permitted to ask? 19 A. There were not. 20 Q. How did you go about identifying the 21 documents that you said you reviewed? 22 A. Well, with respect to the records 23 officers, I knew that there were procedures -- and 24 this goes back to my past experience with the 25 company that there were procedures and schedules</p>	<p>Page 592</p> <p>1 Q. And in total, how many hours were involved 2 in your preparation to give testimony regarding 3 the topics for which you were designated in the 4 Leavitt and Fong cases? 5 A. At least 200. 6 MR. COX: I don't have any further 7 questions. 8 Thank you, Mr. Mittenenthal. 9 THE VIDEOGRAPHER: This concludes the 10 deposition -- 11 MR. SWANSON: Uh, uh, uh, uh -- 12 THE VIDEOGRAPHER: Oh, I'm sorry. I 13 was -- I was waiting -- I'm so sorry. I was 14 waiting for a response. I saw nothing. I strike 15 that. 16 MR. SWANSON: I need to take my seat 17 again. 18 THE VIDEOGRAPHER: Yeah. So sorry. 19 MR. SWANSON: We're still on the record, 20 aren't we? 21 Oh, funny. 22 REDIRECT EXAMINATION BY MR. SWANSON: 23 Q. I bet you're happy this is about done, 24 huh? 25 A. Well --</p>

<p>Page 593</p> <p>1 Q. I think we all are.</p> <p>2 A. I will be happy when it is done.</p> <p>3 Q. I just want to clarify some things from</p> <p>4 the testimony you just gave, and I will be brief.</p> <p>5 When you -- you testified in June in the</p> <p>6 Hayes case; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And in June, you said you were aware of</p> <p>9 the Leavitt case but you hadn't been asked to do</p> <p>10 any specific work with respect to that case.</p> <p>11 Do you remember that testimony?</p> <p>12 A. Yes.</p> <p>13 Q. And you also said you didn't even know</p> <p>14 about the Fong case.</p> <p>15 You remember that testimony in the Hayes</p> <p>16 case?</p> <p>17 A. I didn't recall it, yes.</p> <p>18 Q. So you hadn't done any work in these cases</p> <p>19 up until June; correct?</p> <p>20 A. I would disagree that --</p> <p>21 Q. Specific to these cases.</p> <p>22 A. My work encompassed talc cases and they --</p> <p>23 much of my preparation was in connection with</p> <p>24 Hayes which I supplemented with specific Fong and</p> <p>25 Leavitt investigation.</p>	<p>Page 595</p> <p>1 A. Those were interviews that were</p> <p>2 follow-ups.</p> <p>3 Well, I hadn't spoken to Ms. Giacino</p> <p>4 before that.</p> <p>5 Q. And none of those original interviews were</p> <p>6 done specifically -- of those 40 people were done</p> <p>7 specifically with the Leavitt and Fong cases in</p> <p>8 mind; true?</p> <p>9 A. They were done with -- with the talc</p> <p>10 litigation in mind.</p> <p>11 Q. Okay. That wasn't my question. They were</p> <p>12 not done specifically with Leavitt and Fong in</p> <p>13 mind, were they?</p> <p>14 A. Correct.</p> <p>15 Q. Everything that you've learned from these</p> <p>16 individuals you've spoken to, other than the</p> <p>17 attorneys for Johnson & Johnson, you've reflected</p> <p>18 in your contemporaneous notes; correct?</p> <p>19 MR. COX: Object to the form.</p> <p>20 BY MR. SWANSON:</p> <p>21 Q. Except for the follow-up interviews where</p> <p>22 you didn't produce contemporaneous notes; is that</p> <p>23 correct?</p> <p>24 MR. COX: Object to the form.</p> <p>25 THE WITNESS: Well, what I've learned</p>
<p>Page 594</p> <p>1 Q. Okay. If anyone were to get the</p> <p>2 impression that all of that work that you were</p> <p>3 doing was specific to the Leavitt and Fong cases,</p> <p>4 that would be the wrong impression from the</p> <p>5 testimony that you just gave in response to</p> <p>6 Mr. Cox's questions; correct?</p> <p>7 A. Well, I -- that -- if that were the</p> <p>8 impression, that would be wrong.</p> <p>9 Q. Right. And you talked about talking to</p> <p>10 40 people, but, actually, once you were working on</p> <p>11 the Leavitt and Fong cases, you spent a few</p> <p>12 minutes speaking to Pam Downs -- and that was</p> <p>13 between Hayes and your Leavitt deposition -- and</p> <p>14 then this last time you spent an hour and a half</p> <p>15 speaking to Pam Downs, and I think, an hour or so</p> <p>16 speaking to Ms. -- Ms. French and Giacino;</p> <p>17 correct?</p> <p>18 A. Yes. I spent -- well, I mean, in total</p> <p>19 the number of hours speaking to Ms. Downs and</p> <p>20 Ms. Giacino.</p> <p>21 Q. Right. So that's about three hours total,</p> <p>22 and that's just two individuals, or three</p> <p>23 individuals you were speaking to, and those were</p> <p>24 the follow-up interviews that you just spoke</p> <p>25 about; right?</p>	<p>Page 596</p> <p>1 encompasses not just my notes but the materials</p> <p>2 I've assembled. The policies and procedures, the</p> <p>3 supporting documents, that is part of what I</p> <p>4 learned.</p> <p>5 BY MR. SWANSON:</p> <p>6 Q. And I may have asked the question poorly.</p> <p>7 But everything that you learned from</p> <p>8 speaking to people at Johnson & Johnson other than</p> <p>9 the lawyers who have information about document</p> <p>10 retention, document searches, document</p> <p>11 productions, the various platforms in which</p> <p>12 documents are kept, those are reflected in your</p> <p>13 contemporaneous notes that have been attached to</p> <p>14 this transcript; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Except for the follow-up interviews, the</p> <p>17 very brief follow-up interview with Pam Downs</p> <p>18 before the Leavitt, the first volume of the</p> <p>19 Leavitt -- Leavitt and Fong deposition, and then</p> <p>20 you've got some notes that I wouldn't call</p> <p>21 "contemporaneous notes" that are summarized in a</p> <p>22 chart that you produced that you brought with you</p> <p>23 to this -- to the second volume of your deposition</p> <p>24 yesterday; true?</p> <p>25 A. I'm sorry. I heard the words, but I</p>

<p style="text-align: right;">Page 597</p> <p>1 wasn't sure what the question was on the table at 2 that point. 3 Q. Okay. The bottom line is, your -- if you 4 spoke to somebody about these talc-related issues 5 in the work that you just described to Mr. Cox, 6 that's reflected in your contemporaneous notes 7 except for a little bit of your follow-up 8 conversations; correct? 9 A. I would generally agree. 10 MR. COX: Object to the form. 11 BY MR. SWANSON: 12 Q. Okay. And how much have you billed 13 Johnson & Johnson for your work in this case? 14 A. It will be -- you mean the bills that have 15 actually gone out the door? I don't know. It 16 will be about close to probably a hundred 17 thousand. 18 Q. Okay. That's \$500 an hour for 200 hours? 19 A. Yes. 20 Q. I'm terrible at math. 21 And that's a hundred -- that's a hundred 22 thousand dollars just in these two cases; correct? 23 MR. COX: Object to the form. 24 BY MR. SWANSON: 25 Q. Or does that include the prior work that</p>	<p style="text-align: right;">Page 599</p> <p>1 you asked for the holds, you haven't audited holds 2 for Johnson & Johnson to find out whether or not 3 there's been good compliance with those holds, 4 have you? 5 MR. COX: Object to the form. 6 THE WITNESS: I've spoken to people in the 7 records functions to understand how hold programs 8 are delivered, how compliance is measured. I 9 haven't audited individual holds. 10 MR. SWANSON: Move to strike nonresponsive 11 portions. 12 That's all I have. Thank you. 13 MR. COX: One question. 14 MR. SWANSON: Okay. Do you want to come 15 over here for it? 16 MR. COX: No, that's fine. 17 MR. SWANSON: You can bounce it off me. 18 And he can look at me when he's answering. 19 RE-CROSS-EXAMINATION BY MR. COX: 20 Q. Mr. Mittenenthal, did all the work you did 21 for the Hayes case inform the testimony you've 22 given in response to the topics in the deposition 23 notices in the Leavitt and Fong cases? 24 A. Yes, it did. 25 MR. COX: That's all I have.</p>
<p style="text-align: right;">Page 598</p> <p>1 you were talking about? 2 A. That includes the prior work. 3 Q. Okay. Now, you mentioned that you -- and 4 we talked about this last time a little bit -- 5 that you actually looked through several hundred 6 pages of documents that were responsive documents 7 produced by Johnson & Johnson in Fong and Leavitt; 8 correct? 9 A. Yes. 10 Q. And you're aware, though, that something 11 like at least 250,000 different documents were 12 produced; correct? 13 A. Yes. 14 Q. And, even though you've seen the responses 15 to the requests for production and you've seen 16 what was described abstractly in terms of the 17 Excel spreadsheets and the various tabs and the 18 Bates numbers, you didn't systematically go 19 through the production and sort of audit the 20 production and see if this was exactly what was 21 produced in response to different requests, have 22 you? 23 A. That's right. That was not something I 24 viewed as my responsibility. 25 Q. And you have not audited -- even though</p>	<p style="text-align: right;">Page 600</p> <p>1 MR. SWANSON: Okay. 2 THE VIDEOGRAPHER: I'm afraid to say 3 anything. 4 MR. SWANSON: You should be. 5 Let's go off the record. 6 THE VIDEOGRAPHER: This concludes the 7 deposition of James Mittenenthal. 8 Volumes II and III contain eight media 9 disks. These originals are to be retained by 10 Tele-Video Production Services. Telephone is 11 (510) 893-0555. 12 Copies are available to interested parties 13 unless otherwise stipulated. 14 Off the record at 2:05. 15 16 (Whereupon, the deposition was 17 concluded at 2:05 p.m.) 18 19 20 21 22 23 24 25</p>

<div style="text-align: right; font-size: small;">Page 601</div> <p>1 SIGNATURE OF DEPONENT</p> <p>2</p> <p>3 I, the undersigned, JAMES PETER MITTENTHAL, do</p> <p>4 hereby certify that I have read the foregoing</p> <p>5 deposition and find it to be a true and accurate</p> <p>6 transcription of my testimony, with the following</p> <p>7 corrections, if any:</p> <p>8</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 10%; text-align: left;">9 PAGE</th> <th style="width: 10%; text-align: left;">LINE</th> <th style="width: 80%; text-align: left;">CHANGE</th> </tr> <tr><td>10</td><td>_____</td><td>_____</td></tr> <tr><td>11</td><td>_____</td><td>_____</td></tr> <tr><td>12</td><td>_____</td><td>_____</td></tr> <tr><td>13</td><td>_____</td><td>_____</td></tr> <tr><td>14</td><td>_____</td><td>_____</td></tr> <tr><td>15</td><td>_____</td><td>_____</td></tr> <tr><td>16</td><td>_____</td><td>_____</td></tr> <tr><td>17</td><td>_____</td><td>_____</td></tr> <tr><td>18</td><td>_____</td><td>_____</td></tr> <tr><td>19</td><td>_____</td><td>_____</td></tr> <tr><td>20</td><td>_____</td><td>_____</td></tr> <tr><td>21</td><td>_____</td><td>_____</td></tr> <tr><td>22</td><td>_____</td><td>_____</td></tr> </table> <p>23</p> <p>24 _____</p> <p> JAMES PETER MITTENTHAL, Date</p> <p>25</p>	9 PAGE	LINE	CHANGE	10	_____	_____	11	_____	_____	12	_____	_____	13	_____	_____	14	_____	_____	15	_____	_____	16	_____	_____	17	_____	_____	18	_____	_____	19	_____	_____	20	_____	_____	21	_____	_____	22	_____	_____	
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<div style="text-align: right; font-size: small;">Page 602</div> <p>1 STATE OF CALIFORNIA)</p> <p>2) ss.</p> <p>3 COUNTY OF ALAMEDA)</p> <p>4</p> <p>5 I, EARLY LANGLEY, a Certified Shorthand</p> <p>6 Reporter, State of California, do hereby certify:</p> <p>7 That JAMES PETER MITTENTHAL, in the foregoing</p> <p>8 deposition named, was present and by me sworn as a</p> <p>9 witness in the above-entitled action at the time and</p> <p>10 place therein specified;</p> <p>11 That said deposition was taken before me at</p> <p>12 said time and place, and was taken down in shorthand by</p> <p>13 me, a Certified Shorthand Reporter of the State of</p> <p>14 California, and was thereafter transcribed into</p> <p>15 typewriting, and that the foregoing transcript</p> <p>16 constitutes a full, true and correct report of said</p> <p>17 deposition and of the proceedings that took place;</p> <p>18 IN WITNESS WHEREOF, I have hereunder subscribed my hand</p> <p>19 on October 22, 2018.</p> <p>20</p> <p>21 _____</p> <p> EARLY LANGLEY, CSR NO. 3537</p> <p> State of California</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																																											

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